

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 4

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 1, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks,
16 Mr. Richard Jewkes, Ms. Theresa Duncan, Mr. Marc
17 Lowry, Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan
18 Villa, Ms. Justine Fox-Young.

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1 THE COURT: All right. Good morning
2 everyone. I appreciate everybody being here ready
3 to go on time.

4 A couple of things. One is, because of
5 the problem with real-time, I think what we're going
6 to do is just run it at the Court and run it with
7 Ms. Standridge. And then Ms. Bean has got a part
8 coming in that should be on Fed Ex this morning to
9 arrive and we'll give it another try. But we've got
10 so many computers on the system that it's not
11 working. So I think it's more important that Ms.
12 Standridge have it and the Court have it than y'all
13 have it for a little bit. But we'll try to get that
14 back up.

15 I received a note from one of the jurors.
16 This is Sylvia Sauer. She's juror number -- sits
17 right in the middle of the front row, from Torreon.

18 It says, "February 1st. Your Honor, my
19 maiden name is Rodriguez. Is that a problem? No
20 relationship. Thank you. Sylvia Sauer."

21 What I would propose to do with this,
22 unless somebody thinks different, is just have maybe
23 Ms. Standridge confirm that when she says, "No
24 relationship," what she's telling the Court is that
25 she didn't have a relationship with any of the

1 Rodriguezes that were mentioned yesterday. I assume
2 that's what she means by it. And if she says, "No
3 relationship," then just tell her there is no
4 problem.

5 Does anybody have any other -- is that
6 acceptable to do it that way, Ms. Armijo?

7 MS. ARMIJO: Yes, Your Honor, it is.
8 Thank you.

9 THE COURT: Does that work for the
10 Defendants?

11 MS. JACKS: Yes, Your Honor.

12 MR. VILLA: Yes, Your Honor.

13 THE COURT: All right. I'm going to have
14 Ms. Standridge mark the note as -- what will that be
15 to your clerk's minutes now?

16 THE CLERK: E.

17 THE COURT: So it will be marked as
18 Clerk's Exhibit E.

19 All the jurors are here and ready to go.
20 Does anybody have anything they need to discuss
21 before we go on the record?

22 MS. ARMIJO: Yes, Your Honor. We filed a
23 motion this morning regarding Mr. Lowry, and we just
24 would like to briefly be heard.

25 THE COURT: Okay. Is the motion

1 sufficient for me to -- for you to be heard on it?

2 MS. ARMIJO: I believe it is. But we
3 would at least just like to -- just maybe two
4 minutes or less.

5 THE COURT: All right. I'd like "the
6 less."

7 MS. ARMIJO: I'll try, Your Honor.

8 Your Honor, I believe why this is an issue
9 now is that previously the Court found under the
10 Rules of Professional Conduct that this was an issue
11 that fell under 16-109(c), because all we
12 concentrated on in the former hearings regarding
13 conflict dealt with whether or not the prior
14 representation was SNM-related. And I believe even
15 the United States at that point was not as strongly
16 advocating for it because it wasn't the Mike Davis
17 situation.

18 However, based upon -- at that time, the
19 defense never informed any of the parties -- the
20 defense for Mr. Baca, that is -- that they would be
21 using this lawsuit as part of their defense. When
22 that became evident last night or yesterday, it now
23 falls under 16-109(a), subsequent representation.
24 Now it's a substantially related matter, which are
25 material adverse.

1 And I would just ask the Court -- what the
2 Court needs to figure out now is if Mr. Donatelli
3 were standing there representing Mr. Baca, that is
4 the test that the Court should prove; not that it's
5 Mr. Lowry because it is all imputed to him.

6 So if the Court believes that Mr.
7 Donatelli would be able to sit there next to Mr.
8 Baca and represent him, that is the test that the
9 United States is requesting the Court do. And based
10 on the fact that now it is substantially related and
11 it's materially adverse to him, then Mr. Baca has
12 the right to adverse-free counsel, and it is not
13 something that either former client or present
14 client can waive. That's the gist of it, Your
15 Honor.

16 THE COURT: All right. Thank you, Ms.
17 Armijo.

18 All right. Anything else from the
19 Government before we bring the jury in?

20 MS. JACKS: Your Honor, I do have one
21 thing, but it can wait for a recess. We don't have
22 to do it now.

23 THE COURT: What's the nature?

24 MS. JACKS: It's in regard to the bench
25 conference yesterday regarding the testimony of

1 Agent Acee that two of the trial defendants have
2 another pending matter.

3 THE COURT: I'm sorry, I'm not tracking
4 that.

5 MS. JACKS: Ms. Gilbert has the page from
6 the transcript. There was a bench conference -- I'm
7 going to come over here -- there was a bench
8 conference roughly around 4:00 yesterday afternoon,
9 or maybe 3:30, during Mr. Castellano's direct
10 examination of Agent Acee. Agent Acee testified
11 that two of the trial defendants have another
12 pending criminal matter. And there was an objection
13 to that, and there was a motion for a mistrial by
14 Ms. Duncan. We objected. I wanted to join Ms.
15 Duncan's motion for a mistrial.

16 Here's the question. I sent you the wrong
17 page. That's not it.

18 MS. GILBERT: Sorry.

19 MS. JACKS: We can take it up later.

20 THE COURT: You're joining the motion, is
21 what you need to do?

22 MS. JACKS: Yes. And I think we left the
23 situation uncured, so I wanted to discuss that with
24 the Court.

25 THE COURT: Okay. We did leave it

1 uncured. Nobody liked my solutions. And they may
2 not have been good ones. But I didn't have a
3 solution.

4 Do you have a solution with Mr. Acee? I
5 think Mr. Villa sort of cleared it up with his
6 client.

7 MS. JACKS: I think where it's left is
8 that Mr. Sanchez and Mr. Baca haven't cleared it up
9 because they can't, because the truth is, they do
10 have another pending case.

11 THE COURT: Okay. All right. If nothing
12 else, why don't we go ahead and bring the jury in.
13 If anybody has got anything else they want to say
14 while Ms. Standridge is lining them up?

15 MR. CASTELLANO: Mine is short, Your
16 Honor. Pretrial, the parties agreed that they would
17 not discuss personal issues with each of the
18 witnesses, where they live, about family, things of
19 that nature. So in opening statement Mr. Lowry, I
20 think, referred to the fact that Mr. Duran moved to
21 a specific location as opposed to a general area.
22 So I just want to make sure we stay away from asking
23 witnesses the personal types of questions like that.

24 THE COURT: All right. Can you get the
25 information out without getting into where they're

1 moving?

2 MR. LOWRY: Yes, Your Honor.

3 THE COURT: I don't mind you saying, "They
4 moved you," and all that, "and got you out of town,"
5 or something like that. But if we can just maybe
6 not get their specific locations.

7 Did you have anything else? Did you have
8 a proposal, Ms. Jacks? Do you have something you
9 want to try to do or --

10 MS. JACKS: Well, Your Honor, I wanted to
11 point out two things. I wanted to point out, number
12 1, that if you go back and look at the record of the
13 objectionable testimony, the answer that Agent Acee
14 gave was completely nonresponsive to Mr.
15 Castellano's question. So the information was just
16 sort of thrown out there for no reason.

17 I think the second thing is that the Court
18 clearly recognized that a comment like that, that a
19 trial defendant has other pending matters, causes
20 serious prejudice and needs be addressed.

21 THE COURT: I'm not sure I buy into that.
22 There were so many discussions of so many cases and
23 so many charges, you know, I must say that until it
24 was pointed out, I didn't catch it. But --

25 MS. JACKS: Well, I think the objection

1 that we had to the Court's solution was, it was
2 essentially directing the U.S. Attorney to have
3 Agent Acee testify to something that was untrue.
4 And I don't think anybody in this courtroom thinks
5 that's appropriate.

6 THE COURT: That's fair. I mean, I was
7 trying to come up with a solution, and I accept the
8 parties' thoughts that that would not be a good
9 solution. But if I don't -- I'm not seeing a
10 solution that is acceptable to everybody, so --

11 MS. JACKS: I actually came up with a
12 solution. I'm sure this won't be acceptable to
13 everybody. But if the Government and/or the Court
14 dismiss the pending charges against Mr. Baca and Mr.
15 Sanchez, then the Court can truthfully tell the jury
16 that nobody here has pending charges.

17 THE COURT: Okay. Well, I'm probably
18 not -- I'm not going to do that, at least on --
19 where the record stands.

20 But Mr. Acee, don't be dropping stuff like
21 that in there. If it's not being called for by Mr.
22 Castellano's questions or something, don't squeeze
23 anything in. You're going to create problems for
24 everybody in the room if you start talking about
25 other cases and stuff like that.

1 MR. CASTELLANO: And Your Honor, I cleaned
2 it up a little bit because I talked about the first
3 indictment and the second indictment and the first
4 two, Mr. Baca and Mr. Sanchez, being named in a
5 previous indictment. So I tried to gloss over that
6 and clean it up by saying they had been named in
7 another indictment related to this case.

8 THE COURT: And Mr. Villa did it with his.
9 And so, you know, there are just so many discussions
10 of cases and charges that are being thrown at the
11 jury at the very beginning. I just don't think it's
12 a serious problem. I don't want it to occur again.
13 I want to try to avoid it. But all right.

14 All rise.

15 (The jury entered the courtroom.)

16 THE COURT: All right. Everyone be
17 seated.

18 Good morning, ladies and gentlemen. Thank
19 for you being back and on time and ready to go. I
20 appreciate counsel doing the same thing. They were
21 in here very early, and we got a little bit of
22 business done, mechanics, before you got in. So I
23 appreciate the way everybody is going about their
24 task and keeping us on track. Thank you. You're a
25 good bunch to work with, and I really appreciate it.

1 All right. Mr. Acee, I'll remind you that
2 you're still under oath.

3 Ms. Jacks, if you wish to continue your
4 cross-examination of Mr. Acee, you may do so at this
5 time.

6 MS. JACKS: Thank you. I said I was
7 almost done, and I'm sticking to that.

8 THE COURT: All right. Ms. Jacks.

9 BRYAN ACEE,
10 after having been previously duly sworn under
11 oath, was questioned, and continued testified as
12 follows:

13 CONTINUED CROSS-EXAMINATION

14 BY MS. JACKS:

15 Q. Good morning, Agent Acee.

16 A. Good morning.

17 Q. Yesterday just before we finished, we were
18 talking about when you interview Government
19 witnesses, sometimes their statements either change
20 or become more detailed as you speak to them over
21 time. Do you recall those questions?

22 A. Yes.

23 Q. And I think yesterday in response to a
24 question from Mr. Maynard, you said that the reason
25 that the statements change is that somebody went

1 back and thought about it a little more. I think
2 that's a direct quote.

3 A. Yes, ma'am.

4 Q. So I just want to talk to you a little bit
5 about that. That's your conclusion; right?

6 A. Yes.

7 Q. You don't have any special powers of --
8 special powers that allow you to know what your
9 Government witnesses are actually thinking; right?

10 A. I don't have any special powers.

11 Q. And you don't know what it is they might
12 have thought about; right?

13 A. No.

14 Q. So for example, they might have thought
15 about it a bit more. That's certainly one option;
16 right?

17 A. I believe that's the option, yes.

18 Q. And they might have thought that if they
19 jazzed up their statement a bit, they might get a
20 little bit more from you.

21 A. They don't get anything from me.

22 Q. Well, from the federal government they do.

23 A. I'm not sure about that.

24 Q. We just talked yesterday about they get
25 money, they've gotten privileges, they've gotten

1 family visits; right?

2 A. They do get those, but those don't have
3 anything to do with their statements.

4 Q. Okay. Well, that's your conclusion;
5 right?

6 A. I think that's a fact, but I don't want to
7 debate with you.

8 Q. Well, you're not inside the minds of these
9 Government witnesses, are you?

10 A. Of course not.

11 Q. And so you only know what they choose to
12 tell you in regards to their motivations; right?

13 A. Yes.

14 Q. Now, I want to move on a little bit just
15 to one other topic, and that is: You were asked
16 some questions yesterday about terminating some of
17 your Government witnesses as what I think you called
18 cooperators; right?

19 A. Their cooperation isn't terminated. But
20 what I'm able to terminate is the fact that they're
21 an FBI informant and they're receiving some payment
22 or other benefit from the FBI.

23 Q. Okay. And you terminated their status --
24 some Government witnesses, you terminated their
25 status as an informant based on their misconduct in

1 violation of their agreement with you.

2 A. Yes. That's why I terminated.

3 Q. And some of that misconduct was abuse of
4 the special visiting privileges that they were
5 provided by the Department of Corrections.

6 A. Yes.

7 Q. And that involved what?

8 A. My termination or --

9 Q. The abuse of the privileges. What did
10 they do?

11 A. Four of the informants that agreed to
12 cooperate had, I'll call it, sexual contact with
13 their wives or girlfriends during visits. And
14 that's not allowed. When I was made aware of it, I
15 addressed it with them and then terminated them.

16 Q. And where were these visits taking place?

17 A. They were at PNM in a small room that had
18 a camera. I couldn't tell you exactly where in the
19 facility, because I'm not that familiar with it.
20 But it was in a room with a table, some chairs. It
21 looked like a visiting room.

22 Q. So it was a small visiting room located at
23 the Penitentiary of New Mexico?

24 A. Yes.

25 Q. Inside a New Mexico State prison?

1 A. The Penitentiary of New Mexico is a state
2 prison, yes.

3 Q. And there's different facilities at the
4 Penitentiary of New Mexico. Was this the Level 6
5 facility?

6 A. Yes.

7 Q. So it was at the most secure facility in
8 the New Mexico State prison system.

9 A. Yes.

10 Q. And did the visiting room have -- was it
11 solid walls, or did it have windows and glass in the
12 door?

13 A. I don't know about the door, but it did
14 have windows. Otherwise, it was contained, a door
15 with -- I think it had two glass windows, a table in
16 the center, and two chairs on either side, and then
17 a camera mounted up in the corner.

18 Q. And do you know what the purpose of the
19 windows are in the visiting room?

20 A. I'd be speculating, but it should be for a
21 guard to be able to walk by and see what's occurring
22 in the room.

23 Q. Now, what do you know about -- and let's
24 just be very clear. These inmates were having
25 sexual intercourse, some of them, with their wives

1 in this visiting room with the window; right?

2 A. I think two had sexual intercourse, and
3 then two did other sexual things.

4 Q. Engaged in oral sex and fondling?

5 A. Yes.

6 Q. So when -- according to -- I mean, you're
7 the person that's in charge of these Government
8 witnesses; right? The buck stops with you, doesn't
9 it?

10 A. To some degree. I mean, from the FBI
11 perspective, it does. I can't control the
12 Department of Corrections.

13 Q. When was the first time that one of the
14 Government witnesses started having inappropriate
15 sexual relations in a visiting room at the most
16 secure prison in the state of New Mexico that has a
17 window in it?

18 A. I don't remember the exact date as I sit
19 here. What occurred was, the Department of
20 Corrections notified me that they had reviewed some
21 video. And then I asked them to go back and review
22 all videos of all visits, and then they found some
23 earlier incidents.

24 Q. So let me repeat my question. When was
25 the first time that happened?

1 A. I'll repeat my answer. I don't know the
2 exact date.

3 Q. Do you know the month and year that these
4 inappropriate sexual contacts began?

5 A. I think it was in early 2017. I can get
6 you an exact date. I just need some time to
7 research.

8 Q. I have the exact date. I'm asking you to
9 tell the jury what it is.

10 A. I don't know the exact date. I think it
11 was in early 2017.

12 Q. Do you know over how many months or weeks
13 this inappropriate sexual contact continued before
14 anything was done about it?

15 A. Would you like me to go down the different
16 defendants and answer that? The different
17 cooperators, I mean?

18 Q. I want you to start with the first
19 Government witness that had inappropriate sexual
20 relations, and go to the last time it happened, and
21 tell me what that time span was.

22 A. I'll have to give you approximate dates
23 because, again, I don't know as I sit here now, the
24 exact dates.

25 Billy Cordova had the first inappropriate

1 sexual contact. I think it was in early 2017. If I
2 remember correctly, he had at least four incidents
3 where this happened when the Department of
4 Corrections went back and reviewed videos.

5 I believe that Benjamin Clark had one
6 inappropriate touching, sexual in nature.

7 MS. JACKS: Your Honor, may I just
8 interrupt here? Because Agent Acee is not answering
9 the question. The question didn't ask him to list
10 the people and how many times. The question asked
11 him for a time span: One week, two weeks, three
12 months, whatever it was.

13 MR. CASTELLANO: I'm going to object, Your
14 Honor.

15 THE COURT: I'm going to -- the question
16 was: "I want you to start with the first Government
17 witness that had inappropriate sexual relations and
18 go to the last time it happened. And tell me what
19 that time span was."

20 MS. JACKS: That's correct. The time
21 span.

22 THE COURT: Well, there were three
23 questions there. And so if you want to break it
24 down and ask another -- but I'm not going to strike
25 that response.

1 MS. JACKS: Well, I'll break it down and
2 ask another.

3 MR. CASTELLANO: I'll object to asked and
4 answered.

5 THE COURT: Overruled. Overruled.

6 BY MS. JACKS:

7 Q. How many weeks total was this visiting
8 room being used for sexual relations with Government
9 witnesses?

10 A. I think about a month.

11 Q. Do you know?

12 A. I don't.

13 Q. And yet, you're in charge and the buck
14 stops with you; right?

15 A. That must be your opinion, because it
16 doesn't.

17 MS. JACKS: I have nothing further.

18 THE COURT: Thank you, Ms. Jacks.

19 Mr. Castellano, do you have redirect of
20 Mr. Acee?

21 MR. CASTELLANO: Yes, your Honor.

22 THE COURT: Mr. Castellano.

23 REDIRECT EXAMINATION

24 BY MR. CASTELLANO:

25 Q. Agent Acee, does the FBI have control of

1 the New Mexico Corrections Department?

2 A. No, sir.

3 Q. Were you housing these inmates?

4 A. I was not.

5 Q. Were you setting the rules for these
6 inmates?

7 A. In a limited capacity. I advised them
8 what the FBI's rules were. They had separate rules
9 they'd have to follow in the prisons.

10 Q. And were you the one responsible for
11 overseeing the contact visits at the prison?

12 A. I was not.

13 Q. And once this came to your attention, did
14 you ask them to investigate into it further?

15 A. I did.

16 Q. As you testified yesterday, did you ask
17 authorities, including New Mexico State Police and
18 Child Protective Services, to investigate to see if
19 there was any wrongdoing that was raised at that
20 level?

21 A. I did.

22 Q. What came of those investigations?

23 MR. VILLA: Objection, calls for hearsay.

24 THE COURT: Well, what's the result of the
25 investigation? Don't tell what was said to you, but

1 you can say what you did about it.

2 Overruled.

3 MR. VILLA: If it's what this witness did,
4 Your Honor, I don't object to that.

5 THE COURT: I think that's what the
6 question is, isn't it?

7 MR. CASTELLANO: It is.

8 A. I notified the New Mexico State Police,
9 provided the videos, and did the same with the New
10 Mexico Child, Youth and Family Development, CYFD.

11 BY MR. CASTELLANO:

12 Q. Also regarding the questions about
13 subsequent interviews, now, when you go back for
14 another interview, is the witness the only person
15 who has had other ideas since the last interview?

16 A. I don't think I understand. I'm sorry.

17 Q. This is what I'm getting to. Once you
18 interview somebody, do you also have, after you
19 think about these things, additional questions for
20 them in order to dig deeper into their statements?

21 A. I do.

22 Q. And sometimes when you ask them questions
23 or take a statement, you then try to go back and
24 verify what they said or check other sources to
25 verify their information and get additional

1 information.

2 MR. VILLA: Objection, leading.

3 THE COURT: Overruled.

4 A. Yes, sir, I do.

5 BY MR. CASTELLANO:

6 Q. Now, I want to go back to yesterday. You
7 were asked about divisions or factions in the SNM
8 and related to your grand jury testimony. Do you
9 recall that?

10 A. Yes, sir.

11 Q. And you were also asked about leadership
12 in the gang. Do you recall that?

13 A. Yes.

14 Q. Now, do you remember the discussion from
15 your grand jury testimony in the paragraph
16 immediately below that, what it said about
17 leadership in the SNM? If not, I can refresh your
18 recollection.

19 A. No, the attorney had some notes on
20 stickies and stuff. I didn't see it.

21 MR. CASTELLANO: May I approach, Your
22 Honor?

23 THE COURT: You may.

24 BY MR. CASTELLANO:

25 Q. I'll have you quietly read that to

1 yourself, the portion that's highlighted, and when
2 you're finished, tell us if that refreshes your
3 recollection.

4 A. Thank you.

5 Q. Immediately below the discussion about the
6 divisions, what did you have to say about leadership
7 or a leader of the SNM Gang?

8 A. I said that the division between Gerald
9 Archuleta and Julian Romero, the battle over the
10 wife, eventually rose to the level of the SNM
11 leadership, to Anthony Ray Baca, and he kind of held
12 court over it and determined that the hit on Julian
13 Romero was a good hit.

14 Q. Also related to that division in the gang,
15 was there any indication that even though there was
16 a division in the gang, that this was one gang, or
17 was it multiple gangs?

18 A. It was one gang.

19 Q. And in that one gang, was there division
20 within the gang?

21 A. Yes.

22 Q. You were asked about the witnesses having
23 access to discovery and the tablets. What happened
24 to some of the tablets once they were tampered with?

25 A. They were seized.

1 Q. And after that time, then, did the people
2 who tampered with their tablets have access to that
3 discovery?

4 A. No.

5 Q. And are you aware that with these
6 discovery tablets, that not all information goes
7 onto them, especially if it's sensitive in nature?

8 A. I'm not aware. I just turn everything
9 over to your office, so I'm not exactly sure what's
10 on the tablets.

11 Q. Now, related to housing and moves as part
12 of benefits for cooperators, why did you move the
13 cooperators?

14 A. For safety.

15 Q. And when you gave \$1,600, approximately,
16 to Mario Montoya to repair his RV, what was the
17 purpose for repairing the RV?

18 A. So he could drive, and drive it out of
19 state and relocate.

20 Q. There was an insinuation yesterday that
21 witnesses were threatened with the death penalty.
22 Did you threaten any witnesses with the death
23 penalty?

24 A. I did not.

25 Q. Can you tell the members of the jury

1 whether all the defendants in this case charged with
2 murder were eligible for the death penalty when it
3 started?

4 A. They were.

5 Q. Can you tell the members of the jury
6 whether all the defendants in this case have now
7 been deemed not death-penalty eligible?

8 A. All of the defendants have been deemed not
9 death-penalty eligible.

10 Q. There was also a claim of you threatening
11 families when you were investigating. Did you
12 threaten anyone's family?

13 A. No, I've not done that.

14 Q. Did you investigate some defendants'
15 family members?

16 A. Yes.

17 Q. For what types of activity?

18 A. Witness intimidation, threatening
19 informants, and smuggling drugs into the jails and
20 prisons.

21 Q. There was also discussion about what was
22 referred to as a cooperator pod. Do you remember
23 approximately how many cooperators were housed --
24 and we're going to also talk about time periods. So
25 at any given point, approximately how many people

1 cooperating were housed in that pod?

2 A. I think it started out with four, and it
3 grew to approximately ten or twelve.

4 Q. Now, what's your understanding of the
5 Marshal Service to be able to house all defendants
6 in this case and cooperators? Is there a way to mix
7 and mingle these people, or are they trying to keep
8 them separate?

9 MR. VILLA: Objection, calls for hearsay;
10 lack of foundation.

11 THE COURT: Well, why don't you first ask
12 the foundation, so we know where he's getting this
13 information from. It's a little bit compound, too,
14 so it's hard for me to figure out. It may be coming
15 from different sources.

16 MR. CASTELLANO: I'll rephrase, Your
17 Honor.

18 BY MR. CASTELLANO:

19 Q. Did you make attempts to work with the
20 Marshal Service to keep cooperators safe?

21 A. Yes, sir.

22 Q. And what attempts did you make to keep
23 them separated from the defendants charged in all
24 the cases?

25 A. Well, when a defendant agrees to

1 cooperate, I let the Marshal Service know that,
2 because it often affects housing, where they're
3 housed. I also share information from the debriefs
4 I'm conducting of the defendants -- or excuse me,
5 the cooperating defendants. I share that
6 information, some of that information, with the
7 Marshal Service as it relates to their duties in
8 safe housing and transportation of the various
9 defendants.

10 Q. And was the cooperator pod, as it's
11 called, one of the solutions that occurred as a
12 result of trying to fit all these bodies into
13 numerous facilities?

14 A. Yes, it was.

15 Q. And approximately how many bodies are we
16 talking about, including defendants and those who
17 eventually became cooperators, approximately?

18 A. All cases related to the SNM?

19 Q. Yes, all cases.

20 A. Eighty.

21 Q. So did you feel comfortable in a situation
22 where a cooperator may be housed in a pod with those
23 against whom he was cooperating?

24 A. No, not at all.

25 Q. Did you have concerns for that person's

1 safety?

2 A. Yes.

3 Q. And before each of these people moved into
4 the pod, had you already taken at least one or more
5 statements from them?

6 A. Yes.

7 Q. So before they even intermingled with the
8 other people, had you already taken a statement?

9 A. Yes.

10 Q. Now, for people like Mario Montoya -- and
11 I'll go down the list -- were they eventually
12 provided lawyers?

13 A. Yes.

14 Q. In Mario Montoya's case, he was provided a
15 lawyer because he was charged with a crime; is that
16 true?

17 A. Yes, sir.

18 Q. What about Billy Cordova? Were you part
19 of the process, even though he wasn't charged with a
20 crime, of getting him an attorney to look out for
21 his interests?

22 A. Yes.

23 MR. VILLA: Objection, relevance.

24 THE COURT: Overruled.

25

1 BY MR. CASTELLANO:

2 Q. What about Lupe Urquizo?

3 A. I caused Mr. Urquizo to get an attorney,
4 and then later charged him.

5 Q. So was he provided an attorney before he
6 was charged?

7 A. Yes.

8 Q. What about someone like Robert Martinez,
9 also known as Baby Rob?

10 A. Same scenario.

11 Q. How did you first meet Robert Martinez?

12 A. I went up to the Penitentiary of New
13 Mexico, Level 6, after Mr. Martinez told the STIU he
14 was done with the gang and he wanted out. The STIU
15 called me. I drove up there that same day and
16 talked to him.

17 Q. Tell us about that first interaction with
18 him. What happened?

19 A. After introducing myself and explaining
20 the nature of my investigation -- this was before
21 we'd indicted anyone; we were well on our way to
22 that, that phase 1 takedown -- I confirmed some of
23 the details that Mr. Martinez had told the STIU,
24 such as his reasons for wanting to get out, the fact
25 that when he left the pod, he surrendered a shank

1 that he had been carrying in his body. And I just
2 talked to him about his motivations to get out, and
3 then I questioned him about his history in the SNM
4 and his activities, and whether or not he'd be
5 willing to cooperate with the Government and testify
6 in court.

7 Q. What do you mean when you said he was
8 carrying a shank inside his body?

9 A. He was carrying a shank in his rectum
10 anytime he left his cell, and he surrendered that
11 when he walked out of the cell and said he wanted
12 out of the SNM pod at the prison.

13 Q. Now, for those who weren't charged and got
14 attorneys, before you spoke to them or their
15 attorneys, were they provided what's known as a
16 Kastigar letter?

17 A. Yes, sir.

18 Q. What was the purpose of the Kastigar
19 letter?

20 A. To offer them extra protections so they
21 could go on the record and give us a statement that
22 we would then not use against them.

23 Q. What's your understanding about why that's
24 supposed to promote truthfulness from them?

25 A. Well, I think it promotes truthfulness --

1 MR. VILLA: Objection, speculation.

2 THE COURT: Well, he can say what the
3 purpose of it is. He can't say specifically what
4 the effect was on any one witness, but he can say
5 what the purpose of it is. So if he wishes to
6 testify that way, he can. Overruled.

7 A. The purpose of the Kastigar letter is to
8 allow the person across the table, the defendant, to
9 speak honestly and freely without those statements
10 being used against him in the Government's case.

11 MR. VILLA: Your Honor, objection. It's
12 still speculation.

13 THE COURT: Overruled.

14 BY MR. CASTELLANO:

15 Q. There was also discussion yesterday about
16 you making phone calls to the district attorney's
17 office where Eric Duran was pending charges. Do you
18 recall that?

19 A. Yes, sir.

20 Q. And do you remember a need to get Eric
21 Duran back to New Mexico for testimony and pretrial
22 hearings?

23 A. Yes, sir.

24 Q. Was that another reason you contacted the
25 DA's office?

1 A. Yes.

2 Q. When you contacted them, once again, did
3 you ask them to dismiss any charges against him?

4 A. No.

5 Q. There was also a claim that if it wasn't
6 recorded, it didn't happen. Is that actually true?
7 If something wasn't recorded, is it true that it
8 didn't happen?

9 A. No.

10 Q. Is that something you tell informants,
11 though?

12 A. Yes.

13 Q. And why do you tell them something like
14 that?

15 A. To stress the importance of them wearing a
16 wire or a recording device, and taking that step to
17 make sure they're wearing a wire and turning on a
18 recorder.

19 Q. And for people like Eric Duran, who had a
20 cell phone, what did you tell him about what that
21 phone would be recording?

22 A. I told him it would record everything.

23 Q. And to the best of your knowledge, did it
24 do that?

25 A. No.

1 Q. What was not recorded, as best as you
2 know?

3 A. Internet activity, photographs.

4 Q. Do you know how that happened?

5 A. Yes.

6 Q. Please explain.

7 A. The court order that I obtained from the
8 Court was to conduct a wire interception or a
9 wiretap. That is, the telephone calls and the text
10 messages. So when that was served on the phone
11 company -- in this case, Verizon -- that's what they
12 captured. When I say "they," Verizon. That's what
13 Verizon sent to the FBI, and that's what was
14 captured, per the court order.

15 Q. Going back to the state case on the Molina
16 murder and the three people who were initially
17 charged, I think yesterday you said that Carlos
18 Herrera was not charged when it was a state case; is
19 that true?

20 A. Yes, sir.

21 Q. And in the context of these pods, the jury
22 will see diagrams later on, but do you remember
23 which pod Javier Molina was killed in?

24 A. Yes. Blue pod.

25 Q. And do you know where Carlos Herrera was

1 housed in relation to the blue pod?

2 A. Next door, in the yellow pod.

3 Q. And have you been to the pod? Have you
4 actually seen it yourself?

5 A. Yes.

6 Q. Is there a door that connects the two
7 pods?

8 A. Yes.

9 Q. So under these circumstances, then, if we
10 have video from the blue pod, are we likely to see
11 Carlos Herrera on that video?

12 A. No.

13 Q. Okay. Now, involving the recording
14 devices in jail, did you have cooperators who had a
15 recording device that recorded conversations with
16 some of the defendants?

17 A. Yes.

18 Q. And can you tell the members of the jury
19 whether or not it had the ability to delete
20 messages?

21 A. It did not.

22 Q. Other than an on-and-off button, was there
23 any other way to basically cause it to function or
24 do what it was supposed to do?

25 A. No, there was just an on button and an off

1 button.

2 Q. What instructions did you give to each of
3 the people who recorded the defendants about the
4 devices?

5 A. I told the defendants that I wanted them
6 to record conversations that pertained to homicides.
7 I wasn't interested in drug trafficking, anyone's
8 life story, or past escapades with girlfriends. I
9 was interested in bodies and solving homicides.

10 I pointed out to each of the men that
11 carried one of these devices how it worked, the
12 simplicity of it, an on-and-off switch. And I
13 pointed out that the batteries were small, as the
14 device was small, and that they needed to conserve
15 the battery power.

16 Q. Why did you feel it was necessary to
17 conserve battery power?

18 A. The device is small. The batteries are
19 small. These inmates are in a secure facility and
20 can't order batteries, and I can't go in and deliver
21 batteries to them. I can't ask the COs to give them
22 batteries, because I don't trust them. So they're
23 stuck in there, they've got to make these
24 recordings, they're in there for weeks, and they
25 need to make the batteries last.

1 There was a second part of that question.

2 Q. Let me move to a related question, then.

3 So with Eric Duran, had he previously had a
4 recording device that didn't appear to capture
5 conversations?

6 A. He did. Thank you. That was the second
7 part of that, that we had tried and failed before,
8 where the informant was telling me they got these
9 great conversations and admissions. I bring the
10 device back to the office, it's downloaded by our
11 technicians, and there is nothing on it because the
12 batteries are dead.

13 Q. And just a quick question, then. So you
14 said "the technicians." What actually happens to
15 the device once it's retrieved and turned over to
16 you?

17 A. I then take it to our -- we have an
18 electronic surveillance technician. I go to her
19 office. There is a counter between her and I. I
20 fill out an evidence submission sheet with the
21 device, which informant made the recording, which
22 suspects or defendants we think are on there. I
23 turn that device in.

24 Within a day or two that technician
25 contacts me and says, "I've downloaded your

1 recordings. You can come pick them up."

2 So then I return, and she gives me usually
3 three DVDs or CDs that have the recordings on it.
4 I'm then able to retain one in my file and provide
5 one to the U.S. Attorney's Office, and then the
6 third copy eventually goes to the defense.

7 Q. And who were people that Eric Duran
8 claimed that he recorded on the device that seemed
9 to fail?

10 A. Timothy Martinez, Red; Mario Rodriguez,
11 Blue. I think he said he got some recordings with
12 some other people that are defendants in other
13 matters.

14 Q. Do you recall if he reported recording
15 Mauricio Varela?

16 A. Yes.

17 Q. What about Daniel Sanchez, if you
18 remember?

19 A. I'm not sure.

20 Q. What about either Jerry Armenta or Jerry
21 Montoya?

22 A. I remember Jerry Armenta. I'm not
23 positive about Montoya.

24 Q. So even though he told you these things,
25 was there any indication that there wasn't anything

1 on the device, or was the device dead because of a
2 dead battery?

3 A. The technician just said, "There is
4 nothing on the device."

5 So then I took it to a different unit, the
6 unit that maintains the devices, which is our
7 technically trained unit, because I wanted to
8 investigate why nothing was on the device. And they
9 said that the batteries were dead.

10 Q. And is that why you later told people who
11 had those devices to conserve the batteries as best
12 they could?

13 A. Yes, and change devices. That initial
14 device you're speaking of was very small. So we
15 went to a bigger device, unfortunately, but the
16 batteries in that were also of limited capacity.

17 Q. Were there times when, if wasn't you, you
18 would at least make arrangement with someone in the
19 Corrections Department to either provide additional
20 batteries or exchange devices so you can capture
21 that evidence?

22 A. Yes.

23 Q. Who did you make arrangements with?

24 A. Two members of the Security Threat
25 Intelligence Unit that I trusted and worked with in

1 Santa Fe, Captain Sergio Sapien, and STIU Officer
2 Christopher Cupit.

3 Q. And what concerns did you have about these
4 devices being found in a secure facility, either by
5 COs or inmates?

6 A. Well, either way, that's a big problem. I
7 mean, if the other inmates find it, it's pretty
8 obvious they've got this recording device, and so
9 that's not good. And in a similar fashion, if a CO
10 finds it, that's going to get that informant or that
11 inmate in trouble because it's some kind of
12 contraband device that's not allowed in there. So
13 either way, we've got to conceal it.

14 Q. Would that cause problems with your
15 operations?

16 A. Yes, it could compromise the entire
17 operation if there are recording devices inside a
18 secure facility.

19 Q. Now, regarding people cooperating, for
20 anybody who has become a cooperator in this case,
21 have they all agreed to cooperate at the same time?

22 A. No.

23 Q. So has the cooperation been staggered over
24 time?

25 A. Yes, over years.

1 Q. And for example, Jerry Armenta. Was he
2 cooperating early in the process or late in the
3 process?

4 A. I'd categorize him as early.

5 Q. And do you recall that when it was a state
6 case, even before it became a federal case, was
7 Jerry Armenta already cooperating, or had he agreed
8 to testify against co-defendants?

9 A. I believe so, yes.

10 Q. And what about somebody like Mario
11 Rodriguez? How recently has he come to the table?

12 A. Just within the last few weeks.

13 Q. You were asked yesterday about Timothy
14 Martinez, also known as Red. Did you state that he
15 killed his good friend Mr. Molina?

16 A. I didn't say that.

17 Q. Were you asked about whether or not he and
18 Mr. Molina were friends?

19 A. Yes.

20 Q. Is it your understanding that he and
21 Mr. Molina were friends?

22 A. Yes.

23 Q. And when it comes to Jerry Armenta, do you
24 recall how much time he had left before he was
25 leaving prison?

1 MR. VILLA: Objection, calls for hearsay.

2 THE COURT: Ask how he's going to know
3 this first.

4 BY MR. CASTELLANO:

5 Q. If you knew how long Jerry Armenta had
6 before he was being released before the murder, how
7 would you know that?

8 A. From reviewing Department of Corrections
9 documents and from -- primarily from that.

10 THE COURT: Let's not elicit the answer,
11 then.

12 Q. Is it your understanding that for the
13 cooperators who pled to murder, that they pled to
14 life in prison?

15 A. Yes.

16 Q. And so with their testimony, are they
17 hoping to get something less than life in prison?

18 A. Yes.

19 Q. You were asked yesterday by Mr. Perez'
20 attorney about people taking responsibility for
21 things they didn't do in a gang. Do you remember
22 that?

23 A. Yes.

24 Q. Now, is it also your understanding that
25 people might do that, but there might also be

1 consequences for claiming something they did when
2 they didn't do it?

3 A. Yes.

4 Q. There might be consequences within the
5 gang?

6 A. Yes.

7 Q. You were asked about three homicides
8 possibly tied to Billy Cordova. Do you remember
9 that?

10 A. Yes.

11 Q. And do you recall whether or not those
12 homicides appeared to be SNM-related homicides?

13 A. Well, I initially thought all three could
14 be. Are you asking for what I discovered after
15 investigating?

16 Q. Yes. Which ones, according to the
17 investigation, appeared to be SNM-related?

18 A. The murder of Sammy Chavez and the murder
19 of an unnamed Los Carnales prison gang member.

20 Q. All right. I'm going to ask you about the
21 pizza party. What was the reason for this gathering
22 and what was served there?

23 A. The Corrections Department put together a
24 recognition ceremony, which we're calling a pizza
25 party, in recognition of these guys, these

1 cooperators, renouncing the gang and being done with
2 that and starting a program into, like, anti-gang
3 programming.

4 What was served there was, the Department
5 of Corrections provided some Pizza Hut pizzas, and I
6 think there was, like, Kool-Aid or punch. There
7 might have been sodas. I don't recall.

8 Q. About how long did the party last?

9 A. I was only there for about 15 minutes,
10 but -- so I couldn't tell you when it ended. But my
11 understanding was, they allowed them about an hour's
12 worth of time. Again, I didn't stay, though, so I'm
13 not sure.

14 Q. And were the inmates allowed to have
15 family members there?

16 A. Yes.

17 Q. And for some of the people who have
18 cooperated, has it been a while since they've seen
19 their families or been able to hug a family member,
20 for example?

21 A. Yes.

22 Q. So was that a big deal to them?

23 A. A very big deal. I witnessed -- it was
24 very emotional for both them and their family.

25 Q. And you also mentioned a graduation

1 ceremony. Was that a separate ceremony than what
2 we'll call the pizza party?

3 A. Yes, it was.

4 Q. What was that graduation ceremony?

5 A. Timothy Martinez, Red, was awarded an
6 associate's degree. I forget what the degree was
7 in. But people from the college came and awarded
8 him his certificate.

9 Q. What kind of celebration was that in terms
10 of what was provided in terms of refreshments?

11 A. I didn't take particular notice because I
12 didn't eat anything. But I think they had cake, ice
13 cream.

14 Q. You used the term "programming" earlier.
15 What do you mean when you use that term in the
16 prison context?

17 A. Programming involves the anti-gang
18 classes, anger management. There is some philosophy
19 course work. Those are primarily the ones that I'm
20 familiar with. But there is other programming and
21 educational opportunities afforded to people that
22 drop out of the prison gangs.

23 Q. What's your understanding of why they
24 would offer something like philosophy classes or
25 lessons?

1 A. Continuing education. The Department of
2 Corrections had a college professor that was
3 developing course work to work with gang members and
4 to help them work through anger issues and
5 decision-making so that they could open their eyes
6 up to other alternatives than just violence.

7 Q. Now, is that because someday these inmates
8 might be returning to the streets?

9 A. Yes.

10 Q. Now, I think our numbers here are
11 different from what the defense says. Yesterday
12 they mentioned there were four killers of Javier
13 Molina. Would you disagree with that statement?

14 A. I would.

15 Q. Approximately how many killers of Javier
16 Molina are involved in this case?

17 MS. JACKS: Objection, Your Honor. That's
18 asking --

19 MR. VILLA: Objection.

20 MR. LOWRY: Objection.

21 MS. JACKS: I think it's invading the
22 province of the jury. It's asking Agent Acee to
23 make a decision that these jurors alone are asked to
24 determine.

25 MR. CASTELLANO: I can rephrase, Your

1 Honor.

2 THE COURT: All right.

3 BY MR. CASTELLANO:

4 Q. From this investigation, how many people
5 have admitted responsibility for the murder or some
6 participation in the Molina murder?

7 A. I count six.

8 Q. Let's go over that list.

9 A. Would you like me to say the names?

10 Q. Yes.

11 A. David Calbert, Lupe Urquizo, Mario
12 Rodriguez, Timothy Martinez, Jerry Armenta, Jerry
13 Montoya.

14 Q. Are you aware of any involvement by
15 somebody named Mauricio Varela?

16 A. Yes. Seven.

17 Q. What about the defendants sitting here in
18 court?

19 A. Yes. I wasn't sure you wanted me to
20 mention that.

21 Q. Yes, we have their four, and these other
22 names. So how many does that give us,
23 approximately?

24 MS. JACKS: Well, excuse me, Your Honor.
25 Objection, this is a confusing line of questioning,

1 if Mr. Castellano is trying --

2 THE COURT: Hold on. I agree it's
3 confusing.

4 What are you trying to -- what are you
5 trying to get him to say about the men in the
6 courtroom?

7 MR. CASTELLANO: Oh, I'm just saying the
8 defense's question yesterday said there were four
9 killers of Javier Molina. What I'm highlighting is
10 how many people were allegedly involved with that
11 murder.

12 THE COURT: Why don't -- with the men
13 here, he can certainly say that the Government has
14 alleged how many of them are involved in the murder.

15 MR. CASTELLANO: And I agree, Your Honor.
16 BY MR. CASTELLANO:

17 Q. I'm not asking you to say anything about
18 the defendants. I'm just asking whether you add
19 them to this list, without --

20 MS. JACKS: Well, objection. That's
21 asking the same question.

22 THE COURT: Hold on. I don't want any
23 reference to the list. You can add -- if you want
24 to say how many people is the Government, in this
25 room, accusing of the murder of Molina, you can ask

1 that question. Then after that, stop.

2 BY MR. CASTELLANO:

3 Q. That's the question, Agent Acee.

4 A. Four.

5 MR. CASTELLANO: May I have a moment, Your
6 Honor?

7 THE COURT: You may.

8 MR. CASTELLANO: Thank you, Your Honor. I
9 pass the witness.

10 THE COURT: All right. Mr. Acee, you may
11 step down. Thank you for your testimony.

12 MR. LOWRY: Your Honor, based on the
13 redirect, we have some follow-up.

14 THE COURT: All right. Mr. Lowry.

15 MS. JACKS: Can we approach before the
16 recross starts? Because I think there is an issue
17 we need to discuss.

18 THE COURT: No. Let Mr. Lowry do his
19 recross.

20 MS. JACKS: Well, this may affect the
21 questions asked.

22 THE COURT: All right. Come up, Ms.
23 Jacks.

24 (The following proceedings were held at
25 the bench.)

1 MS. JACKS: I'll be quick. On redirect,
2 Mr. Castellano elicited from Agent Acee that somehow
3 Mauricio Varela has accepted responsibility for the
4 Molina homicide. As we sit here today, we have
5 absolutely no information of that. And in fact, the
6 charges were dismissed against Mr. Varela. So I
7 don't know what he's referring to. But if he's
8 referring to some sort of debrief, we need it.

9 MR. CASTELLANO: That's what I said the
10 investigation revealed about people who admitted or
11 were tied to the murder. And I agree Mauricio
12 Varela did not make admissions to that. So there is
13 nothing to disclose.

14 MR. LOWRY: He said he made recordings of
15 Mauricio Varela. And there is nothing like that in
16 this.

17 THE COURT: You're going to do redirect.

18 MR. CASTELLANO: The testimony was that
19 Eric Duran said he made recordings, but the device
20 did not record.

21 THE COURT: Go to your recross. I don't
22 need to rehearse it with you. Go.

23 (The following proceedings were held in
24 open court.)

25 THE COURT: All right, Mr. Lowry.

1 RECROSS-EXAMINATION

2 BY MR. LOWRY:

3 Q. Good morning, Agent Acee.

4 A. Good morning, sir.

5 Q. Agent Acee, I want to talk to you about a
6 comment you made on redirect. You said you were
7 concerned about the safety of the cooperators?

8 A. Yes, sir.

9 Q. And you know that the cooperators weren't
10 the most well-behaved group.

11 A. They were not.

12 Q. Okay. You said you didn't know what was
13 on the tablets after you seized them, that the
14 cooperators had?

15 A. Correct.

16 Q. And you know that those cooperators
17 breached the security of the tablets and used those
18 computers to access the internet, as you said,
19 access Facebook pages, access all kinds of
20 communication capacities.

21 A. Some of them did.

22 Q. Some of them did?

23 A. Yes, sir.

24 Q. And that didn't give you any concern that
25 they were using those tablets in some kind of

1 nefarious or criminal purpose?

2 A. It did.

3 Q. But you don't know what's on them?

4 A. No, sir.

5 Q. You didn't care to look inside them to see
6 what kind of communications they were having?

7 A. I did want to do that, but I had to
8 respect their rights and the fact they had
9 attorneys. I couldn't just take their stuff and
10 look through it without a court order or permission.

11 Q. And you know how to apply for a court
12 order, don't you?

13 A. Yes, sir.

14 Q. But you didn't?

15 A. I think the United States did, the
16 attorneys.

17 Q. So don't they usually share with you the
18 information they get so you can augment your
19 investigation?

20 A. Yes, we work together.

21 Q. So you didn't get that information?

22 A. As to what is on the tablets?

23 Q. Correct.

24 A. Well, there was a process. I'm happy to
25 explain it, if you want.

1 Q. No. I just want to know, did they give
2 you the information that was on the tablets so you
3 could assess whether there is any kind of safety
4 threat?

5 A. No. They're still being evaluated.

6 Q. So you're going to take your time?

7 A. I don't have them.

8 Q. Now, you said that you didn't suggest the
9 death penalty for any of the cooperating witnesses?

10 A. Oh, I didn't threaten them? I did not,
11 no.

12 Q. So you didn't -- did anyone suggest to
13 Lupe Urquizo that he could get the death penalty?

14 A. I don't know.

15 Q. But you were in the room with the folks at
16 this table interviewing Lupe Urquizo, weren't you?

17 A. Yes. I can represent that no one from the
18 FBI or, from my recollection, the U.S. Attorney's
19 Office mentioned that.

20 Q. And did you monitor the inmate calls
21 during this investigation?

22 A. No. Our task force did, but I personally
23 did not.

24 Q. Did they report to you back -- report back
25 to you things that the inmates were saying on those

1 calls?

2 A. Yes. Our focus was not on the
3 cooperators, though.

4 Q. Okay. So the cooperators could do as they
5 pleased?

6 A. No. I'm just saying that I had limited
7 resources, and there are thousands of hours of phone
8 calls, and we focused on the noncooperators' phone
9 calls.

10 Q. And you're aware that just recently, Jerry
11 Montoya had a cellphone in his cooperating unit --
12 in his cell?

13 MR. CASTELLANO: Objection, calls for
14 hearsay.

15 THE COURT: Ask him how he knows.

16 MR. LOWRY: I just asked him if he was
17 aware, Your Honor.

18 THE COURT: It's a yes/no question. Then
19 overruled.

20 A. Yes.

21 BY MR. LOWRY:

22 Q. You are aware of that?

23 A. Yes.

24 Q. Does that concern you?

25 A. Absolutely.

1 Q. Did you ask to see the contents of that
2 cellphone?

3 A. I don't want to say "allowed." I'm aware
4 that a local drug task force in the region where the
5 prison is located is investigating that, and that
6 they have the phone and have dumped it or are
7 analyzing it.

8 Q. But my question to you was: Did you ask
9 to see the contents of that phone?

10 A. In time. I have not. I'm letting them
11 complete their investigation.

12 Q. I want to move on to this Kastigar letter
13 you said you provided to people. And you said that
14 the purpose of the Kastigar letter was to speak
15 honestly and freely?

16 A. Yes, sir. But I want to be clear. I
17 don't provide the Kastigar letter. That comes from
18 the United States Attorney's Office.

19 Q. I just want to be clear. You don't know
20 if somebody is being honest with you ever, do you?

21 A. No.

22 Q. Now, you were talking about the wiretaps
23 you put on the phones. And you said that you didn't
24 request that the communications company save the
25 photographs.

1 A. No, I didn't request one way or another.
2 What we submitted was the standard wiretap order
3 which captures the phone calls and the text
4 messages.

5 Q. But those phones that you provided to
6 individuals in the prison had photography
7 capability, didn't they?

8 A. It did.

9 Q. And they could send photographs to anybody
10 they chose to send photographs to.

11 A. They could.

12 Q. And they could receive photographs from
13 other people.

14 A. Yes.

15 Q. And you could easily write something down
16 on a piece of paper, photograph it, and send it out
17 to somebody, couldn't you?

18 A. One could do that.

19 Q. And you wouldn't have any idea what was
20 being communicated to somebody on the outside.

21 A. In the manner you described, no; if it's
22 in a photo, no.

23 Q. And that didn't concern you during this
24 period?

25 A. I didn't know that we weren't capturing

1 that.

2 Q. Did you ever review the communications
3 that were transpiring with the folks that had
4 cellphones during the course of the investigation?

5 A. I had an agent assigned to those duties,
6 so I personally didn't. But he provided me with
7 summaries.

8 Q. Did those summaries tell you that the
9 individuals using those phones were sending out
10 photographs and receiving photographs?

11 A. Yes.

12 Q. Did you ask to see what those photographs
13 looked like?

14 A. No. Again, that agent was capable of
15 doing that, and did that.

16 Q. But did you ask to see what the
17 photographs showed?

18 A. No.

19 Q. So it wasn't of concern to you?

20 A. Well, it was of concern to me, because I
21 was guessing when I heard that the person was
22 sending photos -- I could surmise what it was and I
23 told that agent to get ahold of that informant and
24 tell him, "Don't be sending selfies."

25 Q. But you don't know if they were selfies,

1 do you?

2 A. I had not seen the photos at that time.

3 Of course, I have now, but I did not --

4 Q. Oh, you have seen the photos?

5 A. I have seen two photos.

6 Q. Do you know how many photos were
7 transferred?

8 A. No, sir.

9 Q. So you don't know if the folks that were
10 using these phones were sending out messages through
11 photographs to other people?

12 A. I don't think that they were.

13 Q. That's not my question. Do you know if
14 these individuals were sending out messages using
15 photographs?

16 A. No.

17 Q. Now, during the course of your
18 investigation -- I am going to move on to a
19 different topic, your investigative techniques.
20 When you talk to individuals, you routinely ask them
21 whether any criminal activity was personal business
22 or SNM.

23 A. I do.

24 Q. How do you tell the difference?

25 A. I ask them more questions and get to the

1 bottom of it.

2 Q. So if somebody who happens to have an SNM
3 tattoo goes out and commits a crime, do you just
4 immediately assume it's SNM business?

5 A. Oh, I think that's different categories.
6 I mean, in the interview, I'm trying to get to the
7 bottom of what that person I'm speaking to's opinion
8 is. Whether or not the Government or the FBI
9 believes that it's related to the gang is, I think,
10 a different matter.

11 Q. And that's just a conclusion they come to
12 on their own terms.

13 A. Sure. It's just their opinion, yes.

14 Q. Now, I want to talk to you very briefly
15 about this pizza party or the social -- what is the
16 word we're using?

17 A. Call it a pizza party.

18 Q. The pizza party. I believe yesterday you
19 called it a social engagement.

20 A. I may have. I forget which one we were
21 talking about.

22 Q. Now, when -- the idea for that pizza party
23 originated with the individuals who were assisting
24 the United States.

25 A. It may have. It originated from

1 Corrections. That's where I heard about it and got
2 an invitation.

3 Q. Okay. So do you recall suggesting to
4 Corrections that Corrections fund the party?

5 A. I don't know that I know that.

6 MR. LOWRY: May I approach, Your Honor?

7 THE COURT: You may.

8 A. Do you want me to turn the page?

9 BY MR. LOWRY:

10 Q. That's okay. Have you ever seen that
11 document before?

12 A. I have not.

13 Q. If I represented to you that that was the
14 original request that the individuals assisting the
15 United States sent, would you agree with me?

16 A. Well, I don't question your integrity,
17 sir. I believe what you tell me. I've just never
18 seen that document. I don't know the history of it.

19 Q. But that document suggests that the
20 individuals that were cooperating with the United
21 States offered to pay for the pizza party.

22 A. I'm sorry. The paragraph you had me read,
23 I didn't see that. I may have missed it.

24 Q. The paragraph I had you read said, "In
25 addition, while our resources are limited, we are

1 willing to shoulder the food-related expenses for
2 this event."

3 It was signed by Jerry Armenta, Benjamin
4 Clark, Billy Cordova, Robert Martinez, Frederico
5 Munoz.

6 A. If I had been allowed to turn the page, I
7 might have seen that. I'm sorry.

8 Q. It was at the very bottom of the page I
9 gave you in the paragraph I asked you to read.

10 A. I didn't see who signed it. I think
11 that's on the next page. I apologize.

12 Q. Oh. But in terms of who was willing to
13 fund the banquet, at least initially, those
14 individuals assisting the United States were willing
15 to do that?

16 A. That's what it sounds like to me.

17 Q. And do you recall asking the Department of
18 Corrections to shoulder the financial burden for
19 that event?

20 A. No. The conversation I had with Myers was
21 that I wasn't going to pay for it.

22 Q. That you were not?

23 A. I was not.

24 Q. With regard to the pizza party, you said
25 it was a big deal for the family to come, so the

1 individuals who were assisting the United States
2 could hug their family members.

3 A. I don't know if I said it like that. But
4 I will recognize that my observations were, yes, it
5 was very emotional and seemed like a big deal for
6 the inmates and their family members.

7 Q. And that's, for somebody who has been in
8 prison for an extended period of time, a substantial
9 benefit?

10 A. I would agree with that.

11 Q. And you could tell from the emotionality
12 of that moment?

13 A. Yes, sir.

14 Q. I believe on your redirect testimony you
15 said that you had got recordings on Mauricio Varela?

16 A. No, I did not. Eric Duran excitedly
17 represented that he did on Varela as well as some
18 other people. And that was the situation in which
19 we found out that the device had dead batteries.

20 Q. And speaking of the dead batteries, you
21 testified on redirect that you told Mr. Duran to
22 record everything.

23 A. No, sir.

24 Q. You didn't?

25 A. No, I -- quite the opposite, that I didn't

1 want people's life stories or past exploits with
2 girlfriends or -- that I was focused on murders, and
3 I wanted conversation about bodies.

4 Q. And that was it?

5 A. I gave him some limiting instructions, if
6 you will, on what I wanted. I may have said a
7 little more; but that I wasn't interested in drug
8 dealing. The focus was the Javier Molina murder.

9 Q. And in your testimony yesterday you said
10 you couldn't recall whether Mr. Duran told you that
11 Mr. Baca was eager to have --

12 A. Oh, I think that was in relation to you
13 asking me about our first meeting, my first time
14 meeting him. In my first meeting with him, I don't
15 know if he told me that. I was trying to get him
16 out the door like, "Hey, I'm Bryan Acee. I'm going
17 to take over for Katie. Here's your recording
18 device. Here's what I want. Get to it."

19 MR. LOWRY: May I approach, Your Honor?

20 THE COURT: You may.

21 A. Thank you.

22 BY MR. LOWRY:

23 Q. Do you recognize that document?

24 A. Yes, sir.

25 Q. Who drafted that document?

1 A. I did.

2 Q. And in that document, does it say that Mr.
3 Baca was eager to kill the Secretary of Corrections?

4 A. Yes, and Mr. Santistevan.

5 MR. LOWRY: Your Honor, could we mark the
6 letter to the Corrections staff requesting the pizza
7 party as an exhibit?

8 THE COURT: You may.

9 MR. LOWRY: We'd move to admit Defense
10 Exhibit EJ.

11 THE COURT: Any objection?

12 MR. CASTELLANO: Objection to hearsay, and
13 this witness said he didn't know anything about that
14 document or how it was generated.

15 THE COURT: I think I'll have to keep it
16 out at the present time, but it will be marked.

17 MR. LOWRY: Thank you, Your Honor.

18 THE COURT: Mr. Lowry.

19 MR. LOWRY: No further questions.

20 THE COURT: Thank you, Mr. Lowry.

21 Ms. Jacks, did you have further --

22 MS. JACKS: I do, briefly. I think I was
23 the last one to cross-examine so I don't know if Mr.
24 Maynard or Mr. Villa have anything.

25 MR. MAYNARD: I have a few questions.

1 THE COURT: All right. Mr. Maynard.

2 RECROSS-EXAMINATION

3 BY MR. MAYNARD:

4 Q. Mr. Acee, you were asked a few questions
5 about getting attorneys for the persons who were
6 cooperating with the FBI and about Kastigar letters.

7 A. Yes, sir.

8 Q. And I want to clarify a little bit about
9 Kastigar letters. But before I go to that, I'd like
10 to ask a couple of background questions about this
11 particular case in the investigation.

12 A. Yes, sir.

13 Q. It's all under a very complicated law
14 called -- well, racketeering laws.

15 A. Yes, sir.

16 Q. And the punishment ranges, potentially,
17 for these types of cases vary widely, do they not?

18 A. Yes.

19 Q. Just from your knowledge. I know you
20 don't have a law degree, but you've been at the FBI
21 for a number of years. So the sentences can range
22 from potentially death penalty -- not that it's in
23 this case anymore.

24 A. Yes, sir.

25 Q. And below that, the next tier is the

1 sentences can be mandatory life imprisonment.

2 A. Yes, sir.

3 Q. And below that is potentially up to life
4 imprisonment?

5 A. I believe you're correct.

6 Q. And below that, there's various ranges of
7 a certain maximum number of years.

8 A. Yes.

9 Q. And then before the statutory maximums of
10 a certain number of years, there are sentencing
11 guidelines, tables, and offense levels, and the
12 sentences can be all over the place.

13 A. They can.

14 Q. All right. Now, some of the
15 cooperators -- in fact, many of them, if not all --
16 the Bureau made sure that they had attorneys to
17 counsel them at an early juncture. Well, it's not
18 your responsibility, but you made that.

19 A. I did for many of them. I don't know that
20 I always did.

21 Q. Right. Okay. Now, the Kastigar letter --
22 basically, what is the effect of the Kastigar
23 letter? If it's agreed upon by the United States --
24 and that is done by an Assistant U.S. Attorney --

25 A. Yes.

1 Q. -- and the defendant, what's the impact of
2 the Kastigar letter?

3 A. That the defendant can tell the truth and
4 speak freely.

5 Q. Basically, isn't it that as long as that
6 person -- that person can reveal other crimes and
7 that the statements, the confessions to those
8 crimes -- the information can't be used against them
9 in a prosecution of those crimes.

10 A. As long as they tell the truth, yes.
11 That's my understanding, sir. I'll defer to your
12 legal background, for sure.

13 Q. Okay. Now -- but it doesn't immunize them
14 from prosecution for a future crime or even immunize
15 them from prosecution from earlier crimes. It just
16 means the statements and the evidence that they give
17 up can't be used against them.

18 A. Just the statements, yes, sir.

19 Q. Right. So in fact, some of these
20 cooperators revealed having been involved in prior
21 crimes, serious crimes.

22 A. Yes.

23 Q. Murder and conspiracy to murder.

24 A. Yes.

25 Q. All right. Now -- and this information

1 could have been and presumably would have been
2 explained to them by the attorneys that were
3 appointed to represent them.

4 A. Yes. I don't explain it.

5 Q. Right. Now, you mentioned that some of
6 the cooperators, as you call them, began cooperating
7 early on. One was Jerry Armenta.

8 A. Yes.

9 Q. Now, isn't it true that there is actually
10 a video of him stabbing Mr. Molina?

11 A. Yes.

12 Q. And one of the other cooperators is Jerry
13 Montoya?

14 A. Yes, sir.

15 Q. And there is a video of him doing the
16 same.

17 A. I think in the video -- actually, the
18 video looks like he punches him, but I believe it's
19 a stab, so you're correct.

20 Q. Right. So whatever they say during these
21 debriefings, the Kastigar interviews, it's not going
22 to be used against them. It can't.

23 A. Well, I hesitate, because I think if they
24 are untruthful, it can be. And I also hesitate just
25 because I'm not as familiar with the Kastigar and

1 the law regarding that as you probably are, the
2 United States Attorneys are.

3 Q. Now, that begs the question: What's
4 truthful?

5 A. That's a tough answer.

6 Q. It is a tough answer, isn't it? And
7 ultimately it's the jury's.

8 A. I'm sorry?

9 Q. Ultimately it would be the jury's.

10 A. Yeah, tough answer, I guess, transfers to
11 them.

12 Q. Because the U.S. Attorney's Office doesn't
13 really have a magic wand to know what's really true
14 and what's not.

15 A. No, they don't.

16 Q. But you had certain suspicions that you
17 wanted to investigate.

18 A. Yes.

19 Q. And you wanted the statements from the
20 cooperators to connect something to your theory of
21 history.

22 A. No, sir.

23 Q. You just said, "Tell me what you have"?

24 A. I don't really care what the cooperators
25 or any witness tells me. I'm just searching for the

1 truth. That's the challenge.

2 Q. Right.

3 A. I don't hope they tell me anything. I'm
4 indifferent to whether it helps or hurts.

5 Q. Now, the last -- you made reference to
6 another witness, Mario Rodriguez.

7 A. Yes, sir.

8 Q. And his cooperation was more recent, you
9 said a few weeks ago. Actually, it was in November,
10 I think, a couple of months ago?

11 A. I think it was at the end of November.

12 Q. Right. Now, these cooperators who have
13 been involved -- have they been sentenced yet?

14 A. No, sir. Well, the ones we've talked
15 about today have not. There are other cases where
16 people have been.

17 Q. Right. But most of them have not?

18 A. Correct.

19 Q. And so some of their -- the determination
20 of their sentence will be made based upon what they
21 say in court.

22 A. I don't know how that works, but they are
23 waiting to be sentenced at the end of the process.

24 Q. I understand.

25 MR. MAYNARD: No further questions.

1 THE COURT: Thank you, Mr. Maynard.

2 Did you have something, Mr. Villa?

3 MR. VILLA: Briefly, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. VILLA:

6 Q. Good morning, Agent Acee.

7 A. Good morning, Mr. Villa.

8 Q. You talked about getting attorneys -- or
9 helping to get attorneys for some of these
10 cooperators. Do you remember that?

11 A. Yes, sir.

12 Q. And Lupe Urquizo was one of them?

13 A. Yes.

14 Q. Lupe Urquizo admitted some responsibility,
15 allegedly, in the Javier Molina murder?

16 A. Yes.

17 Q. And then he was given an attorney, and
18 ultimately entered into some sort of plea agreement;
19 right?

20 A. The order is backward there, but yes.

21 Q. Did he plea before he had an attorney?

22 A. No, I meant the part about where he told
23 me -- where he talked to me. He had the attorney
24 before he gave his statement.

25 Q. I got it. Part of the process of having

1 an attorney is to facilitate negotiation of charges,
2 protect the client, that sort of thing?

3 A. You know better than me, but that sounds
4 right.

5 Q. Okay. You also said that Billy Cordova
6 got an attorney.

7 A. Yes.

8 Q. And Billy Cordova didn't have an attorney
9 when you came to see him at MDC and he decided to
10 cooperate; correct?

11 A. He didn't have a federal attorney when I
12 first met him.

13 Q. Right. So you were telling him, "I'm
14 going to charge you with racketeering," and he
15 didn't have an attorney to defend him against
16 potential racketeering charges.

17 A. No.

18 Q. And when he agreed to cooperate, you
19 decided not to charge him with racketeering at that
20 time.

21 A. Well, no. That decision was made by the
22 U.S. Attorney's Office.

23 Q. So he was not charged with racketeering at
24 that time.

25 A. He was not.

1 Q. And within a month or so -- we've talked
2 about this -- he talks to Mr. Perez and records Mr.
3 Perez; right?

4 A. Yes.

5 Q. It was only after that that Mr. Perez then
6 gets charged in this case?

7 A. Correct.

8 Q. And still to date, despite Mr. Cordova
9 having an attorney, he's never had to plead guilty
10 to any charges in the federal cases?

11 A. Correct.

12 Q. You discussed the state case and indicated
13 that Carlos Herrera was not charged in the state
14 case, the state case for the Javier Molina murder.
15 Do you remember that?

16 A. Yes, sir.

17 Q. Mr. Perez wasn't charged, either, was he?

18 A. No.

19 MR. VILLA: That's all the questions I
20 have.

21 THE COURT: Thank you, Mr. Villa.

22 Ms. Jacks, do you have recross?

23 MS. JACKS: On a few topics, but it's
24 going to be brief.

25

1 RECROSS-EXAMINATION

2 BY MS. JACKS:

3 Q. Agent Acee, you testified on redirect,
4 when Mr. Castellano asked you some questions, that
5 you're not responsible for the New Mexico Department
6 of Corrections. Do you recall that testimony?

7 A. Yes.

8 Q. And you said you can't control them.

9 A. Correct.

10 Q. Would you agree with me that they are
11 investigating or participating in the investigation
12 of this case in conjunction with the FBI?

13 A. That's true.

14 Q. And in fact, I think you testified that
15 when Robert Martinez wanted to become a Government
16 witness, it was the STIU officers from the
17 Penitentiary of New Mexico that contacted you by
18 telephone; right?

19 A. Part of that is true, yes. Part of it is
20 not.

21 Q. What did happen with respect to that?

22 A. Robert Martinez at that time didn't know
23 the FBI was investigating the SNM, because we hadn't
24 done any arrests yet. He just wanted to give up the
25 gang life and turned in his shank and told STIU

1 that, and then they called me. That's correct.

2 Q. So STIU called you on the phone and said,
3 "Hey, we got a guy here that you might be interested
4 in talking to"?

5 A. Yes.

6 Q. And just so that it's very clear, the
7 people that work for the Security Threat
8 Intelligence Unit are employees of the New Mexico
9 Department of Corrections; right?

10 A. Yes.

11 Q. And they, in fact, work at the
12 Penitentiary of New Mexico where the Government
13 witnesses later were engaging in sex acts with their
14 girlfriends and wives.

15 A. The STIU are in all the prisons.

16 Q. So they work at the prison where the sex
17 acts occurred.

18 A. Some of them do.

19 Q. Okay. Do you also have email addresses
20 for people in the Security Threat Intelligence Unit?

21 A. Some of them.

22 Q. And are you also in telephonic contact
23 with other employees of the New Mexico Department of
24 Corrections that are in other units or other
25 positions, not the STIU?

1 A. Yes.

2 Q. And you have their email addresses and
3 contacts, as well; right?

4 A. I do.

5 Q. When were the tablets seized from the
6 Government witnesses?

7 A. The day after I received the email
8 confirmation -- I previously testified about one of
9 the cooperating defendants and their attorney asking
10 me to come to a meeting at Sandoval. I attended
11 that. That cooperator claimed they were
12 compromised, sent me the email. The next day I let
13 the Marshal Service and the U.S. Attorney's Office
14 know, and then the Marshal Service caused them to be
15 seized. I'd have to go back to my reports to give
16 you the exact date.

17 Q. Do you know roughly month and year?

18 A. The year would be 2017. I think it was --
19 gosh, it's been seven or eight months. So spring,
20 early 2017.

21 Q. You testified, when Mr. Castellano asked
22 you, that you investigated some people's family
23 members for witness intimidation and smuggling drugs
24 into the prison. Do you recall that testimony?

25 A. Yes.

1 Q. Okay. You didn't investigate any family
2 members of Mr. Sanchez for intimidating witnesses or
3 smuggling drugs into the prison, did you?

4 A. No.

5 Q. You testified, when Mr. Castellano asked
6 you on redirect, that before Government witnesses
7 were allowed to intermingle, you took their
8 statement -- or you took a statement from them
9 first. Do you recall that testimony?

10 A. Yes.

11 Q. Okay. That's not true, is it, in every
12 case?

13 A. I can't think of a case where --

14 Q. Well, is there a situation where you told
15 one Government -- where you set up a meeting between
16 one Government cooperator and somebody you wanted to
17 become a Government witness, and let them speak
18 prior to you ever interviewing the person who the
19 Government witness had a meeting with?

20 A. You have to break that down for me. I'm
21 not sure I'm following.

22 Q. We talked about this yesterday. Wasn't
23 there a situation where you arranged a meeting
24 between a Government witness and someone that was
25 actually charged as a defendant?

1 A. I don't think so. I think I've had
2 meetings with cooperators and uncharged people. I'm
3 not sure that I have with --

4 Q. Well, did you have a Government -- did you
5 arrange a meeting between a Government witness and
6 an individual by the name of David Calbert, who
7 later became a Government witness?

8 A. Oh, see, I don't think that was later. I
9 think that was all the same day, and that was
10 approved through their attorneys. So I think that
11 that was all just two cooperators meeting. It
12 sounds like you're asking if one of them was a
13 noncooperator, and I don't think he was.

14 Q. Well, at the time of the meeting, was
15 David Calbert a Government witness?

16 A. He'd agreed to be.

17 Q. At the time of the meeting, had you
18 interviewed Mr. Calbert?

19 A. Yes. I was walking him out of the FBI
20 office, and Lupe Urquizo was waiting in another area
21 of the office.

22 Q. So you arranged the meeting -- based on
23 your recollection today, you're saying you arranged
24 the meeting after you spoke with Mr. Calbert?
25 Excuse me. That you arranged the meeting to happen

1 after you spoke with Mr. Calbert?

2 A. I believe so, because I think I was
3 escorting Calbert out to the STIU vehicles to
4 transport him back. But the order may have been
5 different there. I cleared it with their attorneys
6 and we all walked down there. I'm thinking it was
7 after, though.

8 THE COURT: Would this be a good time for
9 us to take our morning break, Ms. Jacks?

10 MS. JACKS: Sure. That's fine.

11 THE COURT: All right.

12 I'm going to give you this instruction
13 this morning, and then you probably won't hear it
14 anymore today. But since we are taking our first
15 break during the Government's evidence today, I'm
16 going to remind you of a few things that are
17 especially important.

18 Until the trial is completed, you're not
19 to discuss the case with anyone, whether it's
20 members of your family, people involved in the
21 trial, or anyone else. That includes your fellow
22 jurors. If anyone approaches you and tries to
23 discuss the trial with you, let me know about it
24 immediately.

25 Also, you must not read or listen to any

1 news reports of the trial. Again, don't get on the
2 internet, do any research for purposes of this case.

3 And finally, remember that you must not
4 talk about anything with any person who is involved
5 in the trial, even if it doesn't have anything to do
6 with the trial.

7 If you need to speak with me, simply give
8 a note to one of the court security officers or Ms.
9 Standridge.

10 Like I said, I'll try not to repeat these
11 things when we take breaks today, but do keep them
12 in mind each time we do take a break.

13 All right. We'll be in recess for about
14 15 minutes.

15 (The jury left the courtroom.)

16 THE COURT: Ms. Standridge did speak to
17 Ms. Sauer, and yes, Ms. Sauer meant she had no
18 relationship to the witnesses. So I think unless
19 anybody thinks otherwise, I think we're fine.

20 All right. We'll be in recess for about
21 15 minutes.

22 (The Court was in recess.)

23 THE COURT: Let's go back on the record.
24 Anybody need to discuss anything before we bring in
25 the jury?

1 MS. BHALLA: Yes, Your Honor.

2 THE COURT: Ms. Bhalla.

3 MS. BHALLA: Thank you, Your Honor. As
4 the Court's aware, we've been raising the issue of
5 late disclosures repeatedly in this case. One of
6 those involves a report dated February 16, 2015.
7 It's a security threat assessment prepared by
8 Captain Sapien and Chris Cupit. It's filled with
9 Giglio material involving almost every confidential
10 informant in this case.

11 The biggest problem with this late
12 disclosure is contained within the report. Bates
13 No. 51438 is a letter from a confidential informant
14 who gives Giglio material on almost every single
15 cooperating witness in this case, which has been
16 redacted and it's completely illegible and has never
17 been disclosed previously, and was sent to Captain
18 Sapien in 2015.

19 And I would ask the Court to again
20 consider the remedy we've requested of striking at
21 least one of the informants in this case. We would
22 move for the striking of Billy Cordova, since this
23 letter appears to involve Billy Cordova.

24 THE COURT: Are y'all preparing a motion
25 on this, or is this just disclosures?

1 MS. BHALLA: The problem, Your Honor, is,
2 we're trying to keep up with the ongoing
3 disclosures. It's really difficult for us to have
4 the time to write the motion, because we're trying
5 to process all this new discovery that keeps coming
6 in. We're doing our best, but it's not an easy job,
7 Your Honor.

8 THE COURT: When you say "redacted," is it
9 still redacted, or --

10 MS. BHALLA: Yes, Your Honor. It's still
11 redacted. In addition to being redacted, it's
12 illegible. It's like a picture copy. It's not the
13 actual letter. It's a photographic copy of the
14 letter.

15 THE COURT: Okay. I think I've seen this.
16 This is the handwritten one; correct?

17 MS. BHALLA: Do you want me to approach,
18 Your Honor, so you can see it?

19 THE COURT: I can see it.

20 MS. ARMIJO: Can we get a Bates number?
21 I'm sorry, I missed it.

22 MS. BHALLA: The Bates number that
23 contains a picture of the letter is 51438. And we
24 tried to do a search to see if this letter has
25 previously been disclosed, and we have not been able

1 to locate it.

2 THE COURT: Okay. Let me see -- Mr. Beck?
3 Do you have a response, Mr. Beck?

4 MR. BECK: Yes. It sounds like they
5 requested the letter at some point and that's the
6 way it was provided to us, a picture like that. I
7 will follow up and see if the actual letter exists
8 somewhere in an unredacted form and see if we can
9 produce that.

10 THE COURT: Do you know if it was produced
11 earlier in the case? Can you make that
12 determination? Let's see what the Government can
13 provide, and then we'll address it, and let's see if
14 it's a little bit more.

15 MS. BHALLA: Thank you.

16 THE COURT: All rise.

17 (The jury entered the courtroom.)

18 THE COURT: I failed to introduce my
19 clerk. I told you Rick Mendenhall was going to come
20 down from Albuquerque on Monday. He actually came
21 on Tuesday. He had an appointment on Monday in
22 Albuquerque.

23 Mr. Mendenhall grew up in Albuquerque,
24 went to Albuquerque Academy, then went to the
25 University of Denver; went to Georgetown University

1 for law school, and he's come home. He worked in
2 New York. He had a gap year before he started his
3 clerkship. So he worked -- well, actually, it was
4 in Washington, D.C., wasn't it, for a predominantly
5 New York firm. And I don't know. He's getting more
6 comfortable being home, eating the green chile and
7 stuff, so he may stick around. He's got an offer to
8 go back to D.C., but he may stick around.

9 All right. Mr. Acee, I'll remind you
10 you're still under oath.

11 And Ms. Jacks, if you wish to continue
12 your recross, you may do so at this time.

13 MS. JACKS: Thank you.

14 THE COURT: Ms. Jacks.

15 BY MS. JACKS:

16 Q. So Agent Acee, Mr. Lowry asked you some
17 questions about your comments to some of the
18 Government witnesses about, if it's not recorded, it
19 didn't happen. Do you recall those questions?

20 A. Yes.

21 Q. And my question to you about that is:
22 Why -- was it important to you that the Government
23 witnesses got recordings of things they claimed
24 people said to them?

25 A. Why was that important to me?

1 Q. Was it important?

2 A. Yes.

3 Q. Okay. And was it important, at least in
4 part, because the recording would help corroborate
5 what these Government witnesses were claiming was
6 said?

7 A. Yes.

8 Q. Mr. Lowry asked you some questions. This
9 is in connection with the door that joins the blue
10 pod and yellow pod out at Southern New Mexico
11 Correctional Facility. First of all, that door --
12 is that a door that people can just freely walk
13 through, or is that a door that needs to be opened
14 with a key?

15 A. It needs to be opened by the guards in the
16 monitoring station.

17 Q. The guards up in the bubble that looks out
18 onto the units?

19 A. Yes.

20 Q. They have to electronically pop the door?

21 A. Yes.

22 Q. Do you know whether the door also has a
23 key?

24 A. I don't.

25 Q. And it's a door that correctional officers

1 use; is that right?

2 A. Yes.

3 Q. It's not a door that inmates go in and out
4 of?

5 A. Not unless the officer pops it for them.

6 Q. Okay. Mr. Lowry asked you some questions
7 about video in blue pod. Are you aware that there
8 is video surveillance capability in blue pod?

9 A. Yes.

10 Q. And is that 24 hours a day, seven days a
11 week?

12 A. Yes.

13 Q. And is that video, based on your
14 knowledge, that's stored for some period of time?

15 A. Yes.

16 Q. Do you know the period of time that the
17 video is stored for and the capability of the
18 system?

19 A. I don't.

20 Q. Okay. Is there a similar video setup in
21 yellow pod?

22 A. There should be, yes.

23 Q. Have you been out to Southern New Mexico
24 Correctional Facility?

25 A. I have.

1 Q. Have you been in yellow pod?

2 A. Yes.

3 Q. And have you seen the exact same sorts of
4 surveillance cameras set up in yellow pod that's in
5 blue pod?

6 A. Yes.

7 Q. And to your knowledge, do those cameras
8 record 24 hours a day, seven days a week?

9 A. They do.

10 Q. And there is some sort of storage
11 capability for video on that system?

12 A. Yes.

13 Q. Do you know how long?

14 A. I don't.

15 Q. Mr. Lowry asked you some questions about
16 Government witness Jerry Armenta, and I think that
17 you said that he had actually agreed to become a
18 witness while the state prosecution was still
19 pending.

20 A. That's my recollection.

21 Q. Okay. Did he agree -- do you know the
22 circumstances under which Mr. Armenta agreed to be a
23 witness in the state prosecution regarding the
24 Molina murder?

25 A. No, I wasn't part of the investigation

1 back then.

2 Q. Do you know what the terms -- or what was
3 promised to him in exchange for becoming a witness?

4 A. No.

5 Q. Do you know whether he was offered a
6 sentence, a reduced sentence of 18 months in prison
7 if he were to become a Government witness?

8 A. I don't know anything about those
9 negotiations.

10 Q. Mr. Castellano asked you some questions
11 about Mauricio Varela. This was in the context of
12 people who admitted that they had some role in the
13 Molina homicide. Do you recall those questions?

14 A. Yes.

15 Q. Mauricio Varela always contended that he
16 was falsely accused of the Molina homicide; correct?

17 A. I've never talked to him. I don't know.

18 Q. You suspected him in that crime; is that
19 right?

20 A. Yes.

21 Q. And he has never admitted participation in
22 the Molina homicide to you or anyone else, to your
23 knowledge, has he?

24 A. He hasn't to me. He's had some
25 conversation with cooperators about it.

1 Q. You claim that -- or you testified, I
2 think, previously that Mr. Duran, Eric Duran, the
3 Government witness, told you that Varela had made
4 some sort of admission to him; is that right?

5 A. Yes.

6 Q. And Duran claimed that that was on a
7 recording.

8 A. Yes.

9 Q. And you were not able to corroborate that
10 information.

11 A. Not via the recording.

12 Q. Mr. Lowry asked you some questions about
13 Lupe Urquizo, and it was in regard to whether you
14 ever threatened him with the death penalty. Do you
15 recall those questions?

16 A. Yes.

17 Q. When you met with Mr. Urquizo -- let me go
18 back for a second. And I think what your answer
19 was, was that nobody from the FBI or the U.S.
20 Attorney's Office mentioned that.

21 A. To my recollection, that's correct.

22 Q. In your meetings with Lupe Urquizo, were
23 you also accompanied by members of the New Mexico
24 Department of Corrections, whether they were from
25 the Security Threat Intelligence Unit or working in

1 some other capacity?

2 A. Yes, because he was confined within a
3 prison.

4 Q. And did anybody in the meetings -- anybody
5 threaten Mr. Urquizo with the death penalty?

6 A. In no meeting -- in any of the meetings I
7 attended with Mr. Urquizo, I never heard any kind of
8 threats about the death penalty.

9 Q. Even from people not employed by the FBI
10 or the U.S. Attorney's Office?

11 A. If I'm in a room, and there's any people
12 in there, regardless of what their uniform or badge
13 says -- I have never heard a person threaten Mr.
14 Urquizo with the death penalty.

15 Q. Okay. Thank you.

16 MS. JACKS: I have nothing further.

17 THE COURT: Thank you, Ms. Jacks.

18 Mr. Castellano, do you have any redirect?

19 MR. CASTELLANO: No, Your Honor.

20 THE COURT: All right. Mr. Acee, you may
21 step down. Thank you for your testimony.

22 MR. CASTELLANO: I note that Agent Acee is
23 subject to re-call.

24 THE COURT: That's correct. And he can
25 remain in the courtroom.

1 All right. Ms. Armijo, does the
2 Government have its next witness or evidence?

3 MS. ARMIJO: Yes, Your Honor. We will be
4 calling Jerry Roark.

5 THE COURT: Mr. Roark, if you'll come up
6 and stand next to the witness box on my right, your
7 left, before you are seated, my courtroom deputy,
8 Ms. Standridge, will swear you in.

9 JERRY ROARK,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated. State and
13 spell your name for the record.

14 THE WITNESS: Jerry Roark, J-E-R-R-Y,
15 R-O-A-R-K.

16 THE COURT: Mr. Roark. Ms. Armijo.

17 MS. ARMIJO: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. ARMIJO:

20 Q. Mr. Roark, how are you employed?

21 A. I'm employed with the New Mexico
22 Corrections Department.

23 Q. What is your current position?

24 A. Deputy Secretary.

25 Q. And how high is that up, in the

1 administration?

2 A. My only boss is the Secretary of
3 Corrections.

4 Q. And who is the current Secretary of
5 Corrections?

6 A. David Jablonski.

7 Q. How long have you been with the New Mexico
8 Corrections Department?

9 A. A little over 28 years.

10 Q. And can you tell us the different
11 positions that you have held over those 28 years?

12 A. Yes, ma'am. In 1989 I started as a
13 correctional officer. I worked my way up through
14 the ranks. I was a Sergeant, a Lieutenant, Captain,
15 Major. I spent a little bit of time as a
16 Classification Officer. I was a Deputy Warden,
17 Director of Adult Prisons. And then this position.

18 Q. And so just so that we're clear, is a
19 correctional officer where you basically would
20 start?

21 A. Yes, ma'am.

22 Q. And now you are directly under the
23 Director, correct?

24 A. No, ma'am, the Secretary.

25 Q. The Secretary, I'm sorry. All right.

1 Now, during the course of that time -- obviously
2 you're familiar with New Mexico Corrections
3 Department, correct?

4 A. Yes, ma'am.

5 Q. Now, I am saying New Mexico Corrections
6 Department. Is that the correct name?

7 A. That is the correct name.

8 Q. Also NMCD?

9 A. That's correct also.

10 Q. And can you tell the jury a little bit
11 about the different facilities within NMCD. How
12 many facilities are there in the state?

13 A. Yes, ma'am. There are 11 prison
14 facilities, six of them are public facilities, five
15 of them are private facilities. Two of our public
16 facilities are female facilities.

17 Q. And of those facilities, I think the
18 jurors have heard a little bit about PNM. What is
19 PNM?

20 A. It's the Penitentiary of New Mexico. It's
21 our facility in Santa Fe. We have -- we have higher
22 risk inmates at that facility, primarily. But we do
23 have a Level 2 facility there.

24 Q. Okay. Is PNM just one building or does
25 the Penitentiary of New Mexico include various

1 buildings?

2 A. There are various buildings. There is one
3 administrative building and four -- excuse me, three
4 prison buildings.

5 Q. And can you tell us what the three
6 different prison buildings are?

7 A. Yes, ma'am. One of them is our high risk
8 facility. Currently we're calling it the Predatory
9 Behavior Management Unit Facility, our North
10 Facility. It previously was called the Level 6
11 facility.

12 We have the Penitentiary of New Mexico
13 level -- South Facility, which previously was called
14 Level 5. Currently it's called -- it's a Level 4.
15 It houses special management population. It has a
16 variety of missions.

17 The third facility is a Level 2 or a
18 minimum restricted. It's our -- it's our -- it's
19 our facility that we use to do work. It's a work --
20 it's a work-camp type facility.

21 Q. Okay. And so -- and you said there is an
22 administrative building, correct?

23 A. That's correct.

24 Q. Is there a building there that is referred
25 to sometimes as Old Main? Can you tell us about

1 that?

2 A. Oh, yes, ma'am. There is a vacated prison
3 facility called the Old Main. That closed in 1999.
4 It was the original Penitentiary of New Mexico.

5 Q. And that is where -- what happened in that
6 building in the '80s?

7 A. It -- on February 2, 1980 --

8 THE COURT: Hold on.

9 MR. LOWRY: Objection, relevance, Your
10 Honor.

11 THE COURT: Overruled.

12 BY MS. ARMIJO:

13 Q. What happened to that building?

14 A. On February 2, 1980, there was a riot.

15 Q. All right. And so was that the riot that
16 is sometimes -- is that the Santa Fe prison riots,
17 sometimes referred to?

18 A. Yes, ma'am.

19 Q. Now, I'm going to just -- because it can
20 get confusing, I just want to make sure we have the
21 different facilities there, or at least a couple of
22 them.

23 All right. Just for clarification, I put
24 PNM up there, and I haven't marked this yet, but on
25 the board -- and I have North and South, referring

1 to the North Facility and South Facility. And if
2 you could tell me again, who is housed at the North
3 Facility?

4 A. Currently what we call them is PBMP --
5 Predatory Behavior Management Program. These are
6 inmates who have been engaged in behavior that
7 requires extra security and extra programming.

8 Q. And what was it previously?

9 A. It was Level 6.

10 Q. And what about the South?

11 A. The South Facility is -- we now house
12 Level 4 inmates and Special Management Population
13 Inmates, or S and P, of the -- and prior to the
14 change in kind of the mission it was the Level 5
15 facility.

16 Q. Do you have any facilities now in the
17 southern part of New Mexico --

18 A. Yes.

19 Q. -- near Las Cruces?

20 A. Yes, ma'am.

21 Q. And what is that facility called?

22 A. The facility in Las Cruces is called the
23 Southern New Mexico Correctional Facility.

24 Q. Is it sometimes referred to by another
25 name?

1 A. Yeah, the acronym, SNMCF.

2 Q. What about the name "Southern"?

3 A. Yeah, sometimes it's referred to as

4 "Southern."

5 Q. Are you familiar with the -- are you
6 familiar with prison gangs?

7 A. Yes, ma'am.

8 Q. And what has Corrections done as far as
9 being able to manage prison gangs? And let me ask
10 this a better way. That's pretty broad. Do you
11 have a specialized unit to handle prison gangs?

12 A. We do.

13 Q. And can you tell us when that started?

14 A. It started in the late '90s -- '97, '98,
15 around then, ma'am.

16 Q. And what was the purpose of that?

17 A. The purpose is that so that we could gain
18 control of our gangs. In the '90s there was a lot
19 of gang-related violence. And quite frankly, the
20 belief was that -- and from my own experience the
21 gangs were running the prisons, and we wanted to get
22 control over that.

23 Q. What was the name of the first group that
24 you created to control the prison gangs?

25 A. I think the group was called STG.

1 Q. And what did that stand for?

2 A. Security Threat Gang unit.

3 Q. And as part of that process and that team
4 being created, was there also a process by which
5 prison gangs were being considered as far as
6 validation for the prisons?

7 A. Yes, ma'am. They were undergoing a
8 validation process.

9 Q. And can you explain to the jury what that
10 means?

11 A. That means that we want to be able to gain
12 enough information on these inmates that we could
13 definitely say that this group of inmates was a
14 threat to our facilities by showing -- by showing
15 their -- their behavior, their -- their cohesion as
16 a group, and that they were -- the purpose was to
17 validate them so that we could properly react to
18 them.

19 Q. And was -- have you ever heard of a prison
20 gang named Sindicato de Nuevo Mexico?

21 A. I have.

22 Q. And is there another name that they go by?

23 A. Sometimes just the English version,
24 Syndicate of New Mexico. They go by their acronym,
25 SNM.

1 Q. And do you know whether or not they were,
2 in fact, validated?

3 MS. DUNCAN: Your Honor, I'm going to
4 object to this.

5 THE COURT: Well, I think we can say -- he
6 can testify what the prison -- what the prison did.
7 I'm a little concerned about validation, because,
8 you know, the jury will make that determination.
9 But I think you could use the word, "Did they
10 consider this to be a prison gang?" And this is
11 what -- if you'll put it in terms of what the
12 Corrections Department did, I think I'll allow that
13 testimony.

14 MS. ARMIJO: Okay.

15 THE COURT: Does that address your
16 concern, Ms. Duncan?

17 MS. DUNCAN: It does, Your Honor.

18 THE COURT: Thank you.

19 BY MS. ARMIJO:

20 Q. Okay. What did the prison do as far as
21 trying to control prison gangs, and specifically
22 related to SNM?

23 A. Well, we want to do a threat assessment,
24 we want to determine whether or not we validated, we
25 want to identify members, and we want to take

1 actions to -- actions to control their behaviors.

2 Q. And was that actually done?

3 A. Yes, ma'am, it was.

4 Q. Now, what actions did you take to try and
5 control the prison gang?

6 A. Well, once we began validating the
7 inmates, we then isolated them. Initially most of
8 them were isolated at the North Facility in Level 6.
9 We started Level 6, Level 5 program. If they made
10 their way down to Level 5, and eventually they were
11 allowed to make their way down to a Level 4, and our
12 policies were rewritten that inmates who belonged to
13 a validated gang could not go below Level 4 custody
14 level.

15 Q. Okay. Now you're talking now about
16 different levels. When was that created by
17 Corrections?

18 A. Late '90s, ma'am.

19 Q. Around this same time period?

20 A. Around the same time -- late '90s, early
21 2000s, around the same time period, yes.

22 Q. And what was the purpose of that?

23 A. To control the behavior of the inmates.

24 Q. Now, tell us what Level 6 -- has that
25 since changed, just so that we're clear? Is there

1 still a Level 6, or did you -- not you personally
2 but did Corrections change that recently?

3 A. Yes, ma'am, we changed it.

4 Q. And when was that changed?

5 A. That change was about 2013, '14, '15;
6 it -- 2014, roughly.

7 Q. All right. So going back to when you
8 first created this system, tell us what Level 6 was?

9 A. Level 6, the easiest way to say it is it
10 was our -- it was our maximum security. So inmates
11 who we believed that were a threat to commit acts of
12 violence or acts of extortion or any sort of thing
13 like that, or inmates who we believe would be
14 victimized by acts of violence, we would put them in
15 Level 6.

16 Q. Now, you indicated that there was a Level
17 5 and a 4, as well. Can you tell us what those
18 different levels were?

19 A. Level 5 is a step-down from Level 6. So
20 once an inmate completes a program at Level 6, and
21 the unit -- the unit management team and the central
22 office decides that they're ready to step down from
23 Level 6, they are placed into Level 4 (sic) as kind
24 of a step-down to prepare them to go to Level 4.

25 Q. And what is at Level 4?

1 A. At Level 4 is a -- it's a general
2 population, but it's a restricted general
3 population. They get more privileges than they get
4 in Level 6 or Level 5, but still these inmates are
5 isolated from other inmates.

6 Q. And what is the purpose of the isolation?

7 A. To protect the other inmates.

8 Q. Now, when you started this in the '90s,
9 what other prison gangs were there?

10 A. The only other one that we looked at
11 validating was -- at that time was the Los Carnales.

12 Q. And at that time who was the bigger prison
13 gang, in numbers?

14 A. The SNM was the larger gang.

15 Q. I'm sorry, the SNM?

16 A. Yes.

17 Q. And did they -- did they get along with
18 the Los Carnales?

19 A. No, they did not.

20 Q. Now, you talked about Southern. What
21 classification of inmates is generally held there?

22 A. We have -- we do now and we have in the
23 past, Level 4, Level 3, and Level 2 inmates.

24 Q. And did you at any point have Level 5 and
25 6?

1 A. No, ma'am.

2 Q. Now, being that Southern or SNMCF had
3 Level 4, did it house, over the years, gang members?

4 A. It did.

5 Q. And why don't we talk a little bit now
6 about Southern. How is Southern set up? Are you
7 aware of that through your job?

8 A. I am.

9 Q. And can you tell us how -- how Southern is
10 set up?

11 MS. ARMIJO: And I believe, Your Honor, at
12 this time I'm going to move for the admission, I
13 believe without objection, to Government's Exhibits
14 Nos. 13, 163, 162, and 15. Sorry, they're not in
15 order.

16 THE COURT: Are defendants aware of those
17 exhibits?

18 MS. JACKS: I believe they are photographs
19 and we have no objection.

20 MR. VILLA: No objection.

21 MS. DUNCAN: No objection.

22 MS. ARMIJO: Two are diagrams.

23 MS. JACKS: Still no objection.

24 THE COURT: All right. Not hearing any
25 objection, Government's Exhibits 13, 163, 162, and

1 15 will be admitted into evidence.

2 (Government Exhibits 13, 15, 162, 163
3 admitted.)

4 MS. ARMIJO: Okay. May we display number
5 13?

6 THE COURT: You may.

7 BY MS. ARMIJO:

8 Q. Mr. Roark, what is it that we're looking
9 at?

10 A. That's an aerial view of Southern New
11 Mexico Correctional Facility.

12 Q. And we can -- and I'm looking at the
13 photograph. There is a building in the front
14 that -- at the bottom of the picture that's
15 administration. I'm assuming that's where people
16 would walk into Southern?

17 A. That's correct.

18 Q. All right. And then you have different
19 things like Building E says "Infirmary." Building F
20 says "Food Service." Now, going to the back of that
21 area, there are some buildings there that have red
22 letters in them. Can you tell us in general what
23 those are?

24 A. Most of those buildings are the housing
25 units. There is one that's labeled PI, but that's

1 Prison Industries. That's a work area.

2 Q. So most of them are actual prison
3 facilities where they are housed; is that correct?

4 A. Yes, they're pods -- they're pods where
5 inmates live.

6 Q. Okay, and that was going to be my next
7 question is how the buildings are set up, and --

8 MS. ARMIJO: I'm going to at this time
9 display with the Court's permission, Exhibit Number
10 162.

11 THE COURT: You may.

12 BY MS. ARMIJO:

13 Q. Are you familiar with this diagram?

14 A. Yes, ma'am.

15 Q. Okay. What is it that we are looking at?

16 A. This is a diagram of a housing unit at
17 Southern New Mexico Correctional Facilities.

18 Q. Okay. And it looks like there are three
19 day rooms pictured in this; is that correct?

20 A. That's correct.

21 Q. Okay. Are the day rooms all one open
22 area, or do we have separate areas?

23 A. Those are three separate day rooms. There
24 are three separate - they are what we call pods, so
25 it's like -- it's a separated unit within the

1 housing unit.

2 Q. And in one building, how many pods are
3 there?

4 A. If -- at Southern New Mexico Correctional
5 Facility, there are three pods per housing unit.

6 Q. Okay. And so would the pods in Exhibit
7 Number 162 be divided up by the dots, as you can see
8 there? I believe the day rooms are displayed and
9 then you have like a line that has dots.

10 A. Yes, ma'am, that's the dividing wall.

11 Q. Okay. That was my next question. Are
12 there walls between those?

13 A. Yes, ma'am, there are.

14 Q. And are you familiar if there are doors
15 that still connect the walls -- or the pods to each
16 other?

17 A. There are.

18 Q. All right. And I'm going to be displaying
19 Exhibit Number 15. Can you tell me what we're
20 looking at?

21 A. That looks like an entry door into a
22 housing unit.

23 Q. Okay. And so this would be -- where would
24 this door be?

25 A. That's B pod, so that's housing Unit 1-A

1 at Southern.

2 Q. Okay. So that would be actually getting
3 into the pod to start to -- from the outside,
4 correct?

5 A. Well, there's a -- no, not really, ma'am.
6 There is an outside door to get inside the housing
7 unit. Then there is like a foyer-type area, and
8 then in the foyer you have the three housing unit
9 doors and the control center door. This would be
10 one of the housing unit -- one of the pod unit
11 doors.

12 Q. All right. And just so that we're clear,
13 this door is to get into B pod. It is not the door
14 that is in between B pod and -- or -- have you ever
15 heard of B pod referred to as blue pod?

16 A. Yeah, it's just a color of the unit.

17 Q. And at Southern, are you familiar -- and
18 right now I'm going to be talking about the year
19 2014. Was there a unit that had blue pod, yellow
20 pod, and green pod?

21 A. I know that -- yes, they color code their
22 units at Southern.

23 Q. And are there more official names?

24 A. Yes, the official names are the letters.

25 Q. Okay. So the unofficial names that I was

1 referring to is based on the color scheme; is that
2 correct?

3 A. Yeah, the historical color scheme of the
4 unit, yes.

5 Q. Now, I'm going to show you Exhibit Number
6 163. Can you tell us what we're looking at now?

7 A. This appears to be an individual pod of --
8 the diagram, an individual pod within the housing
9 unit.

10 Q. Okay. And on the left and in the top we
11 have some little divisions there that say, I
12 believe, "Bunk, bunk and hamper area." What are
13 those different units?

14 A. Those are individual cells.

15 Q. And is there a top level to each pod and a
16 bottom level?

17 A. Yes, ma'am.

18 Q. Okay. So would -- do you know -- I
19 believe this indicates on the screen that's an upper
20 level, so would there also be the same number of
21 cells on the bottom unit?

22 A. Yes, ma'am. There is eight cells on the
23 top, eight cells on the bottom.

24 Q. All right. Now, in going to talk about
25 the levels that you had, Level 6, 5, and 4, are

1 there different privileges that inmates have within
2 those levels?

3 A. Yes, ma'am.

4 Q. And can you tell us about that?

5 A. Yes, ma'am. In Level 6 the privileges are
6 based on visitation, property, telephone calls,
7 access -- access to programming. It just -- you get
8 increased privileges as you work your way down. So
9 a Level 6 is the most restrictive, Level 5 is less
10 restrictive, and Level 4 is less restrictive.

11 Q. And I'm going to ask you a few terms and
12 ask if you could explain them to the jury. Have you
13 ever heard of the term "tier time"?

14 A. Yes, ma'am.

15 Q. What is tier time?

16 A. Tier time is allowing inmates out of their
17 cells to congregate with each other.

18 Q. And how is it spelled?

19 A. T-I-E-R

20 Q. All right. And when they congregate --
21 and I still have up Exhibit Number 163 -- are they
22 allowed to congregate in one area that you see on
23 the diagram there?

24 A. Yes, they congregate in the day room.

25 Q. All right. And does the amount of time

1 that they're able to congregate there depend on what
2 classification they're in? Meaning Level 6 inmates,
3 are they allowed tier time in their day room?

4 A. At the time that we're talking about,
5 Level 6 inmates did not have tier time.

6 Q. Okay. And what about Level 5; do you
7 recall?

8 A. Level 5 had one hour, at least one hour of
9 tier time, five days a week.

10 Q. And what about level 4?

11 A. Level 4, two to four hours.

12 Q. Now, what does the term "count" mean?
13 When correctional officers have to do a count?

14 A. Well, I'm going to assume you mean the
15 formal count. That means inmates go inside their
16 cells and they have to stand up for count. And
17 they're locked in their cell, the officer walks by
18 and makes sure that they're there, and they're
19 alive.

20 Q. And how often does that help -- happen?
21 And -- and I'll put it in a time frame. Let's
22 assume 2014. Approximately.

23 A. Yeah. It would be easier for me to tell
24 you what times we do counts.

25 Q. Okay.

1 A. We start out at 10:30 p.m. We do a count.
2 We do a count at midnight. We do a count around
3 2:00 or 2:30 a.m. It depends what facility we're
4 talking about. A count at 5:00 a.m., a count at
5 11:00 a.m., and a count at 4:00 p.m. So we do six
6 counts a day.

7 Q. Okay. And then going to the waking hours
8 of the counts, so to speak, I believe you said there
9 is one early in the morning; correct?

10 A. There is one at 5:00 a.m. in the morning,
11 yes.

12 Q. Which would be early morning for some
13 people, I guess. 11:00 in the morning; correct?

14 A. Yes.

15 Q. Okay. And then another one at 4:00; is
16 that right?

17 A. That's correct.

18 Q. And during that time, where do the inmates
19 have to be?

20 A. They have to be in their cells, standing
21 up.

22 Q. Okay. And does that occur over a certain
23 amount of time, or is it -- is it something that the
24 inmates are then required to go into their cells to
25 allow for count, or can it be just freely done?

1 Tell us how it works.

2 A. Well, for a formal count, the inmates --
3 it's pretty regimented, so the inmates know what
4 time count is. But the officers, as a courtesy,
5 tell the inmates a few minutes before count, usually
6 about 15 minutes before lockdown for count, so...

7 Q. And so are they locked down for count?

8 A. They do. They go to their cells and they
9 are locked in their cells during count.

10 Q. And how long -- and what is lockdown, just
11 so that we're clear?

12 A. Lockdown just means that inmates are
13 locked in their cells. In some cases we do have
14 inmates out, because we have to feed inmates, they
15 have to get their clothing washed. We have inmates
16 out doing work during these counts, too.

17 Q. Okay. Now, let's go to 2013. What was
18 your position with Corrections at that time?

19 A. I was Director of Adult Prisons.

20 Q. And what did that entail?

21 A. I oversaw the 11 prison facilities, and
22 oversaw -- I managed some policies and that kind of
23 stuff.

24 Q. Now, have -- I believe you spoke earlier
25 about the very first unit designed to control gangs

1 as STG. Had that name changed?

2 A. Yes, ma'am, it has.

3 Q. What's the name of the gang unit?

4 A. STIU. Security Threat Intelligence Unit.

5 Q. And do you have those at the different
6 facilities?

7 A. We do.

8 Q. And what is the purpose of them? Did the
9 purpose remain the same?

10 A. It expanded. Their primary purpose is
11 still to control gangs, but they're also doing
12 intelligence information to gain information on drug
13 trafficking and other types of criminal activity
14 inside the prison.

15 Q. All right. Let's talk a little bit about
16 that. Is there drug activity in the prisons?

17 A. Yes, ma'am.

18 Q. And how does that occur in a secure
19 environment?

20 A. Multiple ways. It comes through the mail,
21 it comes through visitation, it comes through -- it
22 comes through -- it gets thrown over fences, it
23 comes through staff. I mean, any way they can
24 figure out how to get it in, they get it in somehow.

25 Q. And I'm assuming that's not allowed?

1 A. It's not allowed.

2 Q. All right. Now -- and what else did STIU
3 do to try and control drugs? What were the other
4 functions?

5 A. Also to control the gangs and other type
6 of criminal activity inside the prison.

7 Q. Now, in 2013 as the Director of Adult
8 Prisons, were you still under the classification
9 systems of 4, 5, and 6, or was that going through
10 any type of change?

11 A. Yeah, we were still there, but we were
12 transitioning. There was a directive from the
13 leadership, and I supported that, of course, that we
14 wanted to reduce our numbers in segregation, which
15 is Level 6, and that we also wanted to -- we wanted
16 to increase privileges and give inmates access to
17 more programming. We had a lot of protective
18 custody inmates in Level 6. We wanted to get rid of
19 those guys out of Level 6, so yes.

20 Q. You said in your answer there was a
21 suggestion by leadership. Which leadership?

22 A. Secretary -- well, not a suggestion, it
23 was a directive. The Secretary Marcantel.

24 Q. All right. And I guess I should mention,
25 who is Secretary Marcantel?

1 A. He was the former Secretary prior to
2 Mr. Jablonski.

3 Q. And how long, approximately, if you can
4 recall, was he Secretary?

5 A. Four or five years.

6 Q. All right. And so were you involved with
7 trying to manage the prison gangs as the Director of
8 Adult Prisons?

9 A. Yes, that would be part of my role.

10 Q. And did you know of an inmate named
11 Anthony Baca?

12 A. I did.

13 Q. How do you know Anthony Baca?

14 A. I know Anthony Baca just from my
15 experience working in the prison, so...

16 Q. And were you aware of his housing
17 situation in 2013?

18 A. I was.

19 Q. And how were you made aware of that?

20 A. Well, he had been at Southern New Mexico
21 Correctional Facility, and that he had been moved to
22 the Penitentiary of New Mexico because of some
23 concerns that they had at Southern.

24 Q. Now, who was being housed in 2013 at
25 Southern, as far as gangs, prison gangs?

1 A. At that time we had SNM, and we actually
2 were moving the Los Carnales down there, also.

3 Q. Okay. And just to be clear, the Los
4 Carnales, would they be -- were they going to be
5 housed in a separate unit?

6 A. They were.

7 Q. So Mr. Baca was moved back up to PNM?

8 A. He was.

9 Q. In 2013?

10 A. He was.

11 Q. Okay. And do you know what facility, if
12 he was at the North or the South facility?

13 A. He was at the North facility.

14 Q. And did you actually have a meeting with
15 him in -- or why don't you tell us -- in 2013 or
16 '14, did you end up having a meeting with Mr. Baca?

17 A. Yeah. I believe it was in January of '14
18 that I decided I wanted to meet with him.

19 Q. And what was the purpose of meeting with
20 him?

21 A. The purpose of the meeting was I wanted
22 to -- I wanted to give the SNM -- I wanted to
23 increase their privileges, but I needed to feel like
24 I had some -- I wanted to engage the interest on
25 them cooperating, and also wanting to be part of

1 giving them increased programming and privileges.
2 So it was for -- maybe it was for my comfort, to
3 make sure I was doing the right thing so...

4 Q. And why did you pick Anthony Baca to talk
5 to?

6 A. Because I knew he was in a position of
7 leadership within the SNM.

8 Q. And so when you met with him, where was
9 this at?

10 A. It was at the Penitentiary North, in
11 Housing Unit 3 in a classification officer's office.

12 Q. And can you tell us what happened at that
13 meeting?

14 A. Basically we talked about that I wanted to
15 work with SNM to get them -- to lower their -- to
16 increase their privileges, increase their access to
17 programming. Kind of like what I had done with the
18 other prison gang. And we talked about -- we talked
19 about, you know, violence, gang politics,
20 recruiting, and those kind of things.

21 Q. Okay. Now, you mentioned something about
22 you talked -- was the purpose of the meeting -- had
23 you had success with another gang?

24 A. I did.

25 Q. Which gang was that?

1 A. It was the Los Carnales.

2 Q. And so after having success with the Los
3 Carnales, did you then go speak to Mr. Baca?

4 A. I did a couple months afterwards, yes.

5 Q. Now, what was the response from Mr. Baca?

6 MS. JACKS: Your Honor, I would object, if
7 it's being offered for the truth, and request that
8 anything Mr. Baca says be limited to him.

9 THE COURT: All right. Is it being
10 offered for the truth?

11 MS. ARMIJO: Yes.

12 THE COURT: All right. And so I will give
13 a limiting instruction.

14 In this situation where you're going to
15 hear the testimony of Mr. Roark about what Mr. Baca
16 said, it can only be used against Mr. Baca. It
17 can't be used against the other three defendants.

18 So I told you in my preliminary
19 instructions to you that there would be times like
20 this. There will be more times, so if in your
21 notes -- if you are taking notes, this might be a
22 good thing to put on your notes, but make certain
23 that this testimony that we're about to receive
24 which is going to be statements by Mr. Baca is only
25 used in reference to him, not against the other

1 three defendants.

2 All right. Ms. Armijo.

3 MS. ARMIJO: Thank you.

4 BY MS. ARMIJO:

5 Q. What did Mr. Baca say in reference to your
6 proposal to him about the gang and gang activities?

7 A. Yes, ma'am. Mr. Baca seemed to be willing
8 to concede that he could control the members of the
9 SNM; that -- that he would be able to control the
10 violence. The only thing that concerned me is that
11 when I asked him about recruiting, he was
12 noncommittal and wouldn't -- actually wouldn't
13 answer that question at all.

14 Q. And what did you take that to mean?

15 MS. JACKS: Your Honor, I object. It
16 calls for speculation.

17 THE COURT: Well, he can give what his
18 impression or understanding of it was.

19 A. Yes, ma'am. My impression was that he
20 wasn't willing to concede and say no, I won't
21 recruit.

22 BY MS. ARMIJO:

23 Q. Did he indicate anything to you about
24 where he wanted to be housed?

25 A. Yeah. He wanted to be housed at Southern

1 New Mexico Correctional Facility.

2 Q. And did he -- so, now, you indicated that
3 you spoke to him specifically because he was in a
4 leadership position. Was there anybody in your eyes
5 that had a higher leadership position?

6 A. It was my feeling that he would be the
7 most influential member of the SNM.

8 Q. Now, after that, what decision did you
9 come to as far as whether or not to do what you had
10 done with the Los Carnales?

11 A. I decided that -- I decided that I had to
12 take a slower path with SNM, that I couldn't just --
13 I had already begun the process of giving Los
14 Carnales the Level 3 privileges. I decided I needed
15 to just take a slower path, and that we were just
16 going to keep them on Tier 1 of Level 4 privileges,
17 and that's what I decided to do with the SNM.

18 Q. All right. And what was that based on?

19 A. That was based on primarily Mr. Baca not
20 committing to -- to not recruiting.

21 Q. And keeping them at that level, did that
22 mean, as you indicated, that they would not have the
23 privileges that the other prison gang, Los Carnales,
24 would have?

25 A. I have -- I would have to take a slower

1 path to getting them those privileges, so yes.

2 Q. Now, did you receive a letter from Mr.

3 Baca after you met with him?

4 A. Yes.

5 Q. All right.

6 MS. ARMIJO: And Your Honor, I'm going to
7 offer into admission what will be Government's
8 Exhibit 740. I believe Mr. Baca's counsel does not
9 oppose it, I believe they're -- but I'm going to
10 move for the admission of this.

11 THE COURT: Any objection?

12 MS. JACKS: There is an objection.

13 MS. DUNCAN: On behalf of Mr. Baca, there
14 is no objection.

15 THE COURT REPORTER: I'm sorry, what? I
16 didn't hear what she said.

17 THE COURT: One at a time, here. And you
18 want the same limiting instruction, Ms. Jacks?

19 MS. JACKS: That's correct. I think all
20 this testimony continues to be limited.

21 THE COURT: All right.

22 MS. FOX-YOUNG: Your Honor, for the
23 record, we object as well, only as previously noted
24 to the Court.

25 THE COURT: All right. So I'll admit

1 Government's Exhibit 740 into evidence. But again,
2 it's only -- as well as the testimony that Mr. Roark
3 made about the statements Mr. Baca made and this
4 letter. You can't use it against the other three
5 defendants. You can only use it in your
6 consideration of the charges against Mr. Baca.

7 All right. 740 is admitted.

8 (Government's Exhibit 740 admitted.)

9 BY MS. ARMIJO:

10 Q. All right. And I have on the screen there
11 Government's Exhibit 740. Are you familiar with
12 this item?

13 A. I am.

14 Q. And how so?

15 A. Mr. Baca wrote this letter and gave it to
16 his caseworker to give it to me.

17 Q. What is a caseworker?

18 A. It's a classification officer. It's a
19 staff member who keeps -- who meets with the inmate
20 regularly, they're caseworkers. They're like --
21 they assist the inmate, they figure the inmate's --
22 they help with the inmate's good time, make sure the
23 inmate's programming, all those kind of things.

24 Q. All right. Now -- and it indicates at the
25 top Anthony Baca, and I believe that it has -- I'm

1 sorry, I didn't mean to do that. I did that.

2 31373. Would that be his inmate number?

3 A. It is.

4 Q. And then where he's housed at the top; is
5 that correct, at the time?

6 A. That's correct.

7 Q. And it says North Unit. Is that the PNM
8 North Unit, Level 6?

9 A. Yes, ma'am.

10 Q. And the date of the letter is February 7
11 of 2014; correct?

12 A. That's correct.

13 Q. All right. Now -- and you -- it's
14 addressed to you as Director of Prisons, correct, to
15 J. Roark, Director of Prisons?

16 A. That's correct.

17 Q. And then he indicates the interview date
18 regarding classification, correct?

19 A. Yes.

20 Q. Now, when you got this letter, what did
21 you take it to be?

22 A. I took it to be that he was going to tell
23 me -- I took it to mean that he was -- he was trying
24 to say, "Hey, I'll do some of these things for you,"
25 and he was trying to negotiate with me. So that's

1 the way I took it.

2 Q. Okay. And in there it says if he would
3 be -- upon release from Level 6 -- from Level 6, so
4 he's asking for his release; is that correct?

5 A. He is.

6 Q. Okay. He says to maintain a peaceful
7 environment at SNMCF, Level 4; is that correct?

8 A. That's correct.

9 Q. To call a ceasefire between SNM members
10 and all other STG gang members currently housed at
11 SNMCF?

12 A. That's correct.

13 Q. And then I believe number 3 was to put a
14 sudden halt to the SNM recruiting process if or when
15 SNM members are released to general population?

16 A. I see that, yes, ma'am.

17 Q. And then the fourth thing it indicates is
18 prevent SNM members from targeting any and all
19 suspected/validated SNM members who have or wish to
20 subject themselves to the RPP Program?

21 A. Yes, ma'am.

22 Q. Okay. Now, in reference to that last one,
23 what at the time was the RPP Program?

24 A. It's the Restoration to Population
25 Program. It's a program that we have housed out of

1 our facility in Clayton, New Mexico, the Northeast
2 New Mexico Detention facility where we house inmates
3 who are either wanting to renounce their gang
4 affiliations or they just want to say, "I'm inactive
5 and don't want any part of the gang life anymore."

6 Q. Okay. So in number, 4 he is saying that
7 he will prevent current SNM members from targeting
8 the people that either want to be inactive or want
9 to renounce the gang; is that how you took it?

10 A. Yeah, I took it like that.

11 Q. All right. And he indicates in the last
12 paragraph about he hopes this will help your
13 decision making easier. And then he also has a P.S.
14 at the bottom; is that correct?

15 A. It is.

16 Q. All right. And he indicates that he has a
17 concern that the staff at -- let's see -- "The SNMCF
18 and STIU staff's negative attitude toward me. They
19 don't seem to understand me, nor the way I approach
20 various issues to resolve other problems with no
21 violence. There is a rush to judgment on their
22 part." And so by saying SNMCF, was he referring to
23 the Southern staff and STIU?

24 A. He was.

25 Q. Is what your belief was.

1 Now, after receiving this letter, did this
2 letter change your mind any and say, "Okay, I'll
3 make a deal with the SNM," or did you not change
4 your mind?

5 A. I didn't change my mind. I did do a
6 conference call with STIU coordinators and with
7 wardens just to kind of get their advice. But none
8 of that changed my mind.

9 Q. All right. And so this letter is dated
10 2/7 of 2014. Do you recall when approximately you
11 would have received it?

12 A. Yeah, probably a couple of days after he
13 wrote it.

14 Q. So then after this letter, nothing changes
15 with the programming or anything else or -- and
16 Mr. Baca is not moved, is he?

17 A. Mr. Baca is not moved.

18 Q. Okay. What happens on March 7 of 2014?

19 A. Javier Molina is murdered.

20 Q. And where did that take place?

21 A. Southern New Mexico Correctional Facility.

22 Q. Now, after that murder, as the Director of
23 Adult Prisons, did you decide to do anything about
24 the housing situation for SNM Gang members?

25 A. At that point --

1 MS. JACKS: Excuse me, can I interrupt?
2 Are we now back into testimony that's admissible
3 against all?

4 THE COURT: It is. This is admissible
5 against all.

6 MS. ARMIJO: Okay.

7 A. Yes, ma'am, we made the decision that all
8 active SNM members would be placed on lockdown.

9 BY MS. ARMIJO:

10 Q. Okay. And what does lockdown mean?

11 A. The day -- that means they're locked in
12 their cells. They're locked in their cells. They
13 have -- they're locked in their cells, ma'am. There
14 are some ACA requirements that every 72 hours we
15 have to give them showers and recreational rules and
16 stuff like that.

17 Q. So the tier time that we were talking
18 about before that was no longer available to them;
19 correct?

20 A. That's correct, we did away with the tier
21 time.

22 Q. Okay. And did you take any additional
23 steps as to moving any people out of Southern?

24 A. We did.

25 Q. What did you do?

1 A. I believe the very next day after the
2 murder, we moved three inmates out of the Southern
3 New Mexico Correctional Facility.

4 Q. And who did you move, do you recall?

5 A. It was Daniel Sanchez, Mario Rodriguez,
6 and Archie Varela.

7 Q. All right. And where were they moved to?

8 A. The Penitentiary of New Mexico, North
9 Facility.

10 Q. Did you decide after that to move anybody
11 out of state?

12 A. We did.

13 Q. And what was the purpose of that?

14 A. The purpose of that is to limit their
15 communications with other inmates inside the system.
16 We wanted to avoid further acts of violence.

17 Q. Who did you move?

18 A. We moved Anthony Baca, Daniel Sanchez, and
19 Varela.

20 Q. Mauricio Varela?

21 A. Correct.

22 Q. And when was that done?

23 A. I don't remember the exact date, ma'am,
24 about a week or two later.

25 Q. Okay. So it was done close in time after

1 the Molina murder?

2 A. That's correct.

3 Q. Now, how long were -- was the SNM kept at
4 Southern or eventually were changes made -- or what
5 did you do? Why don't you tell us.

6 A. Well, we kept them on lockdown for the
7 investigation. Yes, we did move inmates around. At
8 some point we decided that we wanted to transition
9 the SNM out of Southern and bring them to the
10 Penitentiary of New Mexico.

11 Q. And what was that decision based on?

12 A. A couple of things. We wanted -- wanted
13 to get a new environment and so we'd have Central
14 Office -- they're closer to Central Office, easier
15 to monitor. Many of the investigators were --
16 involved were out of the Albuquerque. It's easier
17 to travel to Santa Fe than Las Cruces. I mean,
18 there were just a lot of reasons to do it.

19 Q. All right. Now, when you moved them up,
20 Southern was still Level 4; is that correct?

21 A. It was.

22 Q. But were they on lockdown; would they be
23 getting Level 4 privileges?

24 A. No, they weren't.

25 Q. Okay. And so when they were moved -- when

1 the SNM Gang members were moved after the Molina
2 murder to PNM, which housing unit were they going
3 to? Would they be going to the North or the South?

4 A. Some of them went to the North and some of
5 them went to the South.

6 Q. So you didn't make a blanket
7 determination, I should say. Was it done on an
8 individual basis?

9 A. It was done on an individual basis.

10 Q. Now, in 2000 -- now, did you decide to
11 slowly start changing things after the Molina
12 murder, as far as privileges to the SNM?

13 A. Yes, ma'am. As soon as we developed more
14 comfort, and as soon as the intelligence started
15 coming in, yeah, of course we have to -- we started
16 giving them more privileges, more access to showers
17 more access to phone -- phone calls, more
18 recreation. And yes, we began to step them down so
19 we could return them back to Level 4 privileges.

20 Q. Okay. And what do you mean by "step
21 down"?

22 A. In -- through the course of the
23 investigation, we made decisions on whether or
24 not -- on whether or not it's safe to proceed to
25 give them more privileges. So it means giving

1 them -- I'll give you an example. I mean, we may
2 start off with only showering them 72 hours a
3 days -- every 72 hours, and then we might give them
4 three showers a week, and then we might give them
5 five showers a week. We progress towards getting
6 them back to --

7 Q. What about --

8 A. -- population.

9 Q. -- visits and phone calls. Did that
10 progressively increase as well?

11 A. It did progressively increase.

12 Q. Okay. Tell us about that.

13 A. I don't have my notes in front of me, but
14 originally we didn't give them any visits or phone
15 calls because we were concerned about
16 communications, that they would use these
17 communications to arrange other violent acts, so we
18 did cut them off for a significant amount of time.
19 But over time we eventually gave them a phone call a
20 month, and then we increased it to two phone calls.
21 We just over time increased the phone calls, the
22 same with the visits.

23 Q. And did you increase that over six-month
24 increments, as you recall?

25 A. I don't know if we did it every six

1 months. We did it as we felt like we were ready --
2 we were comfortable and ready to do it.

3 Q. Now, going to July of 2015, what did you
4 determine to do in July of 2015?

5 A. At that time because -- at that time we
6 felt that we were going to be safe enough to release
7 them from their lockdown. I told the wardens at my
8 three facilities that had the SNM to start having
9 town halls with them. And town halls just means
10 meet with them, and explain to the what -- that we
11 were going to take them off lockdown. And we were
12 going to begin tier time, specifically tier time.

13 Q. Okay. The tier time, is that time in the
14 day room together that you mentioned earlier?

15 A. That's correct.

16 Q. And town halls, are these meetings done on
17 a one-on-one basis, or did you do them with groups
18 of individuals?

19 A. Yes, ma'am. I wouldn't have done them.
20 The wardens at the facilities would have done them.
21 The wardens would have gone -- and it actually
22 depends on kind of the preference of the warden.
23 Some wardens like to get them all together, some of
24 them like to go from pod to pod and talk to them.
25 So they would talk to a small group of inmates, tell

1 them what we're going to, and then allow for any
2 sort of interaction or questions from the inmates.

3 Q. And after you had directed the wardens to
4 do these town halls, did you eventually start in a
5 different facility allowing tier time and basically
6 no more lockdown?

7 A. That's correct.

8 Q. Okay. Did something happen at Southern
9 New Mexico Correctional Facility when you did that?

10 A. We did. When we lifted the lockdown at
11 Southern New Mexico Correctional Facility, within a
12 couple of hours inmate Julian Romero, an SNM member,
13 was assaulted by another SNM member.

14 Q. Okay. And was that Julian Romero? Is he
15 an SNM Gang member?

16 A. Yes, ma'am.

17 Q. And who was he assaulted by, do you
18 recall?

19 A. I believe it was Conrad Villegas.

20 Q. And you indicated that was done within
21 hours of tier time opening up?

22 A. If I remember right, it was within two or
23 three hours.

24 Q. And what did you do as a result of that --
25 and was that in July of 2015?

1 A. Yes, ma'am, it was.

2 Q. And what did you do as a result of that?

3 A. Put them right back on lockdown.

4 Q. And was the decision to go on lockdown
5 statewide?

6 A. It was.

7 MS. ARMIJO: If I may just have a moment,
8 Your Honor.

9 THE COURT: Certainly.

10 MS. ARMIJO: No further questions.

11 THE COURT: Thank you, Ms. Armijo.

12 Were you planning to go first, Ms.

13 Fox-Young?

14 MS. FOX-YOUNG: Yes, Your Honor.

15 THE COURT: All right Ms. Fox-Young.

16 CROSS-EXAMINATION

17 BY MS. FOX-YOUNG:

18 Q. Good morning, Mr. Roark.

19 A. Good morning.

20 Q. Mr. Roark, can you tell me again when you
21 first started working for the New Mexico Corrections
22 Department?

23 A. Yes, ma'am, 1989.

24 Q. And are you familiar with Mr. Rudy Perez?

25 A. I know who he is, yes, ma'am.

1 Q. And in your time working for the
2 Corrections Department, you have worked in various
3 facilities out of the 11 that you described?

4 A. I've worked in two. As an officer, I
5 worked in two facilities.

6 Q. Okay. Are you -- you're generally
7 familiar with all the facilities, though, given your
8 current position and your previous position as
9 Director of Adult Prisons?

10 A. Yes, ma'am.

11 Q. And I think you talked about a couple of
12 them. Did you mention the facility that's in Los
13 Lunas?

14 A. I didn't.

15 Q. Can you tell me what facility that is?

16 A. It's the Central New Mexico Correctional
17 Facility.

18 Q. And what kind of inmates stay there? What
19 is that facility used for?

20 A. Several different types. They have
21 several different missions. They have reception and
22 diagnostic center, which is when inmates who come in
23 from court or come in from the county jails that
24 have been convicted, they are housed there. We have
25 a long-term care unit, which inmates who need

1 specialized medical care. We have inmates at our
2 mental health treatment center, inmates who need
3 mental health care. We have a Level 1 farm, so we
4 have a working farm at that facility. And we
5 have -- at that time we had a Level 2 facility,
6 which is a work-type camp. It's currently -- we
7 transitioned it into a geriatric facility right now.

8 Q. So in -- in layman's terms, does that mean
9 there is a prison hospital in Los Lunas?

10 A. There is.

11 Q. Okay. And it services anybody who is
12 incarcerated and needs to be in a hospital in New
13 Mexico?

14 A. Well, it's like -- yeah, that's a tough
15 question, ma'am, because it's like a hospital, but
16 if the inmate really needs hospital care, we send
17 them out to the hospital. So it's like -- I don't
18 want call at it lower level hospital, but that's
19 kind of what it is.

20 Q. Okay.

21 MS. FOX-YOUNG: Your Honor, I don't think
22 there is any objection. I'd like to move
23 Defendants' Exhibit V-24.

24 MS. ARMIJO: No objection, Your Honor.

25 THE COURT: All right. From anybody else?

1 All right. Defendants' Exhibit V-24 will be
2 admitted into evidence.

3 (Defendants' Exhibit V-24 admitted.)

4 BY MS. FOX-YOUNG:

5 Q. I know, Mr. Roark, that's a lot of tiny
6 writing up there. Let's see if we can make it
7 bigger. But do you recognize this document and what
8 it is?

9 A. I do.

10 Q. Can you tell me what it is?

11 A. It's the -- it's an Offender Physical
12 Location History, taken off of CMIS, which is our
13 Computerized Criminal Management Information System.

14 Q. Okay. And is it for -- it's a physical
15 location history, then, that shows where a certain
16 individual was at any time while they were in the
17 custody of the Corrections Department?

18 A. Where he was housed, yes, ma'am.

19 Q. Okay. And do you know which individual's
20 location history this is?

21 A. Yes, his name is on the top.

22 Q. Okay. Rudy Perez?

23 A. Correct.

24 Q. Okay. And I want you to be able to see
25 it. I want the jury to be able to see it. So we'll

1 just have to look at segments of it, so it's large
2 enough.

3 I want to go back and look at Mr. Perez'
4 location history, beginning in the summer of 2012.
5 And can you tell me, Mr. Roark, the second and a
6 half entry from the bottom, August 24, 2012 -- I'm
7 sorry, let's go up. The fifth entry from the
8 bottom, September 4, 2012 and September 6, 2012,
9 says "medical." Do you know where Mr. Rudy Perez
10 was September 6, 2012, based upon this history?

11 A. Based upon this document, no, but usually
12 when it says in medical, he's at some hospital
13 somewhere.

14 Q. Okay. He was at a hospital. And then if
15 you go up two lines, the next day, September 7,
16 2012, it says LTC. Do you know where he was
17 September 7, 2012?

18 A. Yes, he was in the Long Term Care Unit,
19 which is what you called the prison hospital.

20 Q. Okay. In Los Lunas?

21 A. Correct.

22 Q. And can you tell me looking at this
23 history how long he remained at the Long Term Care
24 Unit before he went to his next location?

25 A. It looks like he was there from

1 November -- September 6 to September 10.

2 Q. Okay. And then November 19, 2012, he goes
3 somewhere else, right?

4 A. Yes.

5 Q. Where does he go?

6 A. He goes to UNM Hospital.

7 Q. All right. And then it looks like for the
8 next several entries, he jumps back and forth
9 between the hospital in Los Lunas and the University
10 Hospital; is that right?

11 A. Yes, ma'am.

12 Q. Okay. And that goes up to -- well, we can
13 see there at the top of the screen -- so from
14 September 7, 2012, up until the following June, he's
15 back and forth to the hospital; right?

16 A. Yes, ma'am.

17 Q. And I don't know if we can take a look at
18 the next section so we can see where he went after
19 he left the hospital in June of 2013. If you'll
20 just hold on for one moment.

21 Okay. So after he leaves the hospital, it
22 looks like he goes back somewhere else in July of
23 2013. Do you see where he went? Right there at
24 the -- July -- it says July 16, 2013 he went back to
25 the hospital in Los Lunas; is that right?

1 A. Yeah. Looks like it was previous to that.
2 Looks like -- no, as you see, he actually went to
3 the LTC on June. C, that's a cell change. Because
4 the B-201, he changed to C-601.

5 Q. Right. And he arrived back at the LTC, at
6 the prison hospital in Los Lunas, is that July 16,
7 2013?

8 A. No, it's -- I'm sorry, ma'am, you have to
9 scroll the next one down. It's -- he came back to
10 the facility on June 12 --

11 Q. Okay.

12 A. -- 2013.

13 Q. So he came back in June, and then he
14 remained in Los Lunas in that hospital until when?

15 A. Until -- it looks like October 3, 2013.

16 Q. Okay. So then come October -- so he's
17 been in and out of different hospitals from
18 September of 2012 up until early October 2013, and
19 then where does he go?

20 A. He goes to Southern New Mexico
21 Correctional Facility.

22 Q. Okay. And that is the facility that you
23 looked at the overhead images of a little bit
24 earlier?

25 A. Yes, ma'am.

1 Q. Okay. And it is also the facility
2 where -- well, let me just ask you this first. It
3 looks like October 21, 2013, he has a cell change
4 or -- or an area change at the Southern New Mexico
5 Correctional Facility. Is that when he goes into
6 blue pod, the B-114?

7 A. Yeah, he goes into -- I believe that B is
8 blue.

9 Q. Okay. So he goes into blue pod in late
10 October. And then -- you've already testified this
11 morning about -- and the jury has heard about what
12 happened March 7, 2014, when Javier Molina died in
13 blue pod; right?

14 A. Correct.

15 Q. Okay. And so sometime after Javier Molina
16 died, did you actually come down to Southern New
17 Mexico Correctional Facility and take a look?

18 A. I did.

19 Q. Okay. Do you know when that was?

20 A. It was that -- it was that same evening.

21 Q. You came down the night of the 7th?

22 A. Yes, ma'am.

23 Q. And at that time, you were investigating
24 what had happened in the course of that day; is that
25 right?

1 A. I wasn't investigating. I was getting
2 information from the Warden and the STIU. They were
3 actually investigating.

4 Q. Okay. The Corrections Department was
5 investigating what happened, including that -- that
6 or whether Rudy Perez had been threatened; is that
7 right?

8 A. They were investigating everything about
9 that incident --

10 Q. Okay.

11 A. -- so the answer is yes.

12 Q. And you recall particularly that, don't
13 you, whether inmate Perez' life was threatened?

14 MS. ARMIJO: Objection, hearsay.

15 A. Yeah, I don't know if I --

16 THE COURT: Well, hold on.

17 MS. ARMIJO: Hearsay.

18 THE COURT: I think it's just
19 investigating the allegations. So I don't think
20 this is hearsay. Overruled.

21 A. I don't remember asking about it on March
22 7 or -- or any time soon after that. But yeah, I
23 had heard about it later on.

24 BY MS. FOX-YOUNG:

25 Q. Do you recall subsequent to your visit to

1 Southern New Mexico Correctional Facility, maybe a
2 week later, forwarding results of an investigation
3 to Secretary Marcantel?

4 A. I forwarded a white paper.

5 Q. Okay. And did that white paper contain --

6 MS. ARMIJO: Your Honor, at this time we'd
7 like to approach.

8 MS. FOX-YOUNG: I'm not going to elicit
9 hearsay, Your Honor.

10 THE COURT: Let's see what the question
11 is.

12 BY MS. FOX-YOUNG:

13 Q. So do you recall communicating results --
14 I don't need you to tell me exactly what you
15 communicated -- but communicating results of your
16 investigation, or the Corrections Department
17 investigation to Secretary Marcantel?

18 A. It was our preliminary -- what we thought
19 was the preliminary best information, yes, ma'am.

20 Q. And -- but you don't recall any specific
21 information that you communicated to Secretary
22 Marcantel?

23 A. I recall some of it. I'd have to see the
24 letter in front of me to remember all of it.

25 Q. Okay. Do you recall -- I think you said

1 it would have been STIU, you recall New Mexico
2 Corrections Department officials investigating a
3 threat against Rudy Perez?

4 A. I do remember that was part of it, yes.

5 Q. Okay. And -- and those investigative
6 results you collected and passed along to Secretary
7 Marcantel?

8 A. No, those -- no, I don't think that's
9 accurate, ma'am. I did the white paper based on
10 some preliminary information, but I didn't have any
11 CI notes or anything specific about Rudy Perez to
12 give to Mr. Marcantel.

13 MS. FOX-YOUNG: Your Honor, may I
14 approach?

15 THE COURT: You may.

16 MS. JACKS: Your Honor, I think if this
17 goes any further, we all need to approach.

18 THE COURT: Okay. Well, let's let her
19 take the note, and then if that is a question of
20 concern, we can, but she --

21 MS. ARMIJO: Your Honor, may we have a
22 Bates reference?

23 MS. FOX-YOUNG: I'm showing Mr. Roark his
24 white paper. It's 49069.

25

1 BY MS. FOX-YOUNG:

2 Q. There is a lot of material in there. I'm
3 just directing you to one area.

4 A. Yes, ma'am.

5 Q. Do you remember that specific information,
6 Mr. Roark? I know it's been a while.

7 A. Yeah, I do remember.

8 THE COURT: Hold it.

9 MR. VILLA: A juror --

10 THE COURT: It's a yes/no question. Just
11 answer it yes or no.

12 MR. VILLA: There was a juror raising
13 their hand.

14 THE COURT: All right. What's the juror
15 concern? All right. We'll get the note.

16 (A discussion was held off the record.)

17 THE COURT: All right. Well, let's take a
18 little bit of a break. We're -- probably what we're
19 going to do is, we're going to take a few minutes'
20 break here, and then we're going to have a late
21 lunch, so we're going to work through the lunch
22 hour. It's a little early to take a lunch break.
23 So why don't we take a morning break, and then we'll
24 come back and take a little bit of a late lunch.

25 All rise.

1 (The jury left the courtroom.)

2 THE COURT: I think it was Ms. Wojcik,
3 there, was feeling sick. So that's what her problem
4 is. So we'll just have to kind of monitor it.

5 MS. FOX-YOUNG: I'm sorry I created that
6 problem, Your Honor.

7 THE COURT: Made her sick?

8 MS. FOX-YOUNG: Yeah.

9 MR. VILLA: That was the only reason I
10 stood up. I wasn't trying to interfere. I saw her
11 waving.

12 MS. FOX-YOUNG: Judge, I don't intend to
13 go any further on this line. I was supposed to say
14 that before we had any argument on it.

15 THE COURT: Okay.

16 MS. JACKS: I'd like to make some argument
17 on it.

18 THE COURT: Okay. Let's do it after the
19 break. We'll be in recess for about 15 minutes.

20 (The Court stood in recess.)

21 THE COURT: All right. Let's go on the
22 record. You wanted to be heard, Ms. Jacks?

23 MS. JACKS: I do, Your Honor.

24 THE COURT: Ms. Jacks.

25 MS. JACKS: And just for the record, the

1 witness is still on the stand. I have no problem
2 with that, but I don't know if anybody else does.

3 THE COURT: All right. If nobody does, go
4 ahead.

5 MS. JACKS: Your Honor, this -- the
6 information that Ms. Fox-Young has been inquiring
7 about --

8 MS. FOX-YOUNG: Your Honor, I do think it
9 would be best if the witness doesn't listen.

10 THE COURT: All right. Mr. Roark, why
11 don't you step outside, then. Thank you, Mr. Roark.

12 MS. FOX-YOUNG: Thank you.

13 (The witness left the courtroom.)

14 MS. JACKS: I think he's left the court.

15 THE COURT: Okay.

16 MS. JACKS: So the information that Ms.
17 Fox-Young has just -- that has been the subject of
18 these last few questions is the subject of Mr.
19 Sanchez' motion 1616, specifically at page 4. And
20 what the issue -- the issue is that after the
21 homicide of Molina, Mr. Perez told Deputy Warden --
22 well, told James Mulheron, who at the time -- let me
23 go back.

24 Mr. Perez told this witness, Mr. Roark,
25 that he was threatened, or there was information

1 that he was threatened. And the Court ruled, in
2 ruling on that motion, that that was a testimonial
3 statement of Mr. Perez, because it was -- it was
4 elicited during questioning or in a conversation
5 with law enforcement after the crime had been
6 committed, and thus was inadmissible against
7 anybody -- was inadmissible against Mr. Sanchez,
8 Baca and Herrera.

9 So my concern is that through this line of
10 questioning, it is going to suddenly come out that
11 Mr. Perez said that he had been threatened. And I
12 think we're treading very closely to infringing on
13 Mr. Sanchez' Sixth Amendment right to confrontation.

14 I think the other concern is, if it's
15 being offered, if the statement of Mr. Perez is
16 being offered to explain this witness' state of mind
17 in the course of his investigation, that may take
18 away the hearsay objection -- or that may take away
19 the hearsay nature of the statement. It doesn't
20 take away the fact that the Court has ruled the
21 statement was testimonial, and thus inadmissible,
22 without the right to confront and cross-examine Mr.
23 Perez, based on the Sixth Amendment guarantees.

24 THE COURT: Well, isn't the way to solve
25 it -- let's just caution Mr. Roark when he comes

1 back in here, don't state at any point in his
2 testimony that Mr. Perez told him that he had been
3 threatened. And just tell him not to give that
4 testimony.

5 MS. JACKS: Or that Mr. Perez told anybody
6 else, and that he was investigating it. I -- I was
7 just concerned because we were right on the line.

8 THE COURT: Well, I thought we were fairly
9 far apart. Anybody have any problem with proceeding
10 that way?

11 MR. CASTELLANO: Not especially with
12 admonishing the witness not to mention the statement
13 at all, but this is what I referred to after opening
14 statements, that they're trying to back-door the
15 hearsay regarding Rudy Perez. Rudy Perez is the
16 only source that there was a threat against Rudy
17 Perez, and so --

18 THE COURT: Well, I don't think -- and you
19 know this, Ms. Fox-Young, you can't elicit your own
20 client's out-of-court statement here. So we can't
21 do it front door or back door. We've just got to
22 keep it out.

23 MR. CASTELLANO: The problem was, she did
24 it in opening statement, so in opening statement she
25 already told the jury that there would be

1 information about a threat to Rudy Perez.

2 THE COURT: It's not going to come through
3 Mr. Roark.

4 MR. CASTELLANO: I agree. And it
5 shouldn't come through any witness, and the fact
6 that they're trying to tap dance around this, I
7 mean, it really is a back-door way of getting in the
8 hearsay statement.

9 THE COURT: Well, you know, jurors tend to
10 punish people who make promises to them and they
11 can't keep them.

12 MR. CASTELLANO: We hope that's the case
13 in closing arguments, Your Honor. But right now
14 they're still trying to get it in through the back
15 door. That's the problem.

16 THE COURT: Be careful, because I've ruled
17 fairly definitively on that. It's both a hearsay
18 problem and a testimonial problem. So don't do
19 anything to get it in court.

20 MS. FOX-YOUNG: Your Honor, I'm not going
21 to elicit any statement of Rudy Perez with this
22 witness.

23 MR. CASTELLANO: I would ask that no other
24 questions about any potential threats to Rudy Perez
25 be touched upon. I mean, he is the only source.

1 THE COURT: I think you have to be careful
2 here, that you can't get into that. If you decide
3 you need to get into something of threats to Mr.
4 Perez, I think you better approach the bench on
5 that.

6 MS. FOX-YOUNG: Well, Your Honor, I'll
7 just say he's not the only source. But I'm done
8 with this line with this witness. And we can take
9 it up with other witnesses.

10 THE COURT: All right. Bring Mr. Roark
11 in. Please bring Mr. Roark in before we bring the
12 jury in. It won't take very long. Can somebody get
13 Mr. Roark?

14 MS. JACKS: Before we get the jurors in,
15 do we want to admonish the witness?

16 THE COURT: I am.

17 MS. JACKS: Okay.

18 THE COURT: All right. Mr. Roark, if
19 you'll come on up and proceed to the witness box.
20 Before you testify any more, let me tell you, do not
21 talk, inject, or anything, even if it sounds like it
22 might be necessary to answer the question, don't
23 inject in any way that you are aware of,
24 investigated, or any threats against Mr. Perez. So
25 don't bring that in in any way.

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: So just keep that out. I
3 don't think you're going to get any questions that
4 are going to require you to say that, to be
5 truthful, on the stand. But just be careful that
6 you don't mention threats to Mr. Perez, Mr. Perez
7 told you there were threats, other people said there
8 were threats against Mr. Perez. Just stay away from
9 that line.

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All rise.

12 (The jury entered the courtroom.)

13 THE COURT: All right. Everyone be
14 seated. If it's all right with everybody, it's a
15 little early to take lunch, we will just take a
16 little bit later lunch. I'm getting affirmative
17 nods, so is that all right, everybody?

18 It makes for a long afternoon if we start
19 taking early breaks, so we're just kind of at an odd
20 break, but let's give it a try. If we need to break
21 a little early, we will.

22 All right. Mr. Roark, I remind you that
23 you're still under oath.

24 Ms. Fox-Young, if you wish to continue
25 your cross-examination of Mr. Roark, you may do so

1 at this time.

2 MS. FOX-YOUNG: Thank you, Your Honor.

3 BY MS. FOX-YOUNG:

4 Q. Mr. Roark, right before the Court took a
5 break, I had shown you a document. I'm not going to
6 ask you any more questions about that, but can you
7 tell me if that refreshed your recollection? Then
8 we'll move on.

9 A. It did refresh my recollection.

10 Q. Okay. Thank you. I know you have a
11 familiarity, and probably a close familiarity, with
12 a number of inmates in the New Mexico Corrections
13 Department system; right?

14 A. I do.

15 Q. And you talked about meeting with some of
16 them, you talked about meeting with at least one of
17 them; right?

18 A. That's correct.

19 Q. And some of them had been housed up at the
20 facility in Santa Fe while you've officed there; is
21 that right?

22 A. Yes, ma'am.

23 Q. Up at PNM?

24 A. Yes, ma'am.

25 Q. Okay. I'll just ask you, do you know --

1 I'm going to ask you about some particular ones. Do
2 you know Mario Rodriguez?

3 A. I do know him.

4 Q. He has a reputation for being a pretty
5 fierce guy, does he not?

6 A. He does.

7 Q. Difficult to control?

8 A. Yes, ma'am.

9 Q. Violent?

10 A. Yes, ma'am.

11 Q. Where is he now?

12 A. He's at the --

13 MS. ARMIJO: Objection, Your Honor.

14 MS. FOX-YOUNG: I'm sorry, Your Honor.

15 I'll strike the question.

16 THE COURT: All right.

17 BY MS. FOX-YOUNG:

18 Q. I'd like to go back to Mr. Perez' physical
19 location history that we were looking at earlier,
20 and where we left off was right when Mr. Perez
21 arrived in blue pod on October 21, 2013, and then
22 you can see -- and we'll try to blow it up a little
23 bit. Yeah, I think -- can you read that okay, Mr.
24 Roark? You have a screen right there, so you can
25 read it fine.

1 A. I can read it, ma'am.

2 Q. You can see then, March 7, 2014, Mr. Perez
3 is moved; is that right?

4 A. That's correct.

5 Q. And he's moved somewhere else in blue pod?

6 A. No. No, ma'am. On March 7, 2014, he was
7 living in what you call blue pod or B pod, 115. He
8 was moved to Charlie pod. And I don't remember what
9 color that is. He was moved to a different pod.

10 Q. And that's at the Southern New Mexico
11 Correctional Facility?

12 A. Correct. And he was also moved -- I'm
13 sorry, ma'am, he was moved -- also was moved to
14 another housing unit because he was in SA-1, then
15 he's moving to SA-2, so that's a completely
16 different housing unit.

17 Q. Okay. So then he stays in one housing
18 unit or another at Southern up until June of 2015;
19 is that right?

20 A. That's correct.

21 Q. And while he's in those housing units at
22 Southern, is he -- is that in what you term -- or at
23 least at the time, termed Interim Level 6?

24 A. Yes, ma'am. We had them all on lockdown,
25 so that's the same kind of thing. It was Interim

1 Level 6.

2 Q. Tell me what Interim Level 6 means.

3 A. It means that we can put someone on Level
4 6 placement pending an investigation. Mostly that's
5 --

6 Q. Let me rephrase my question. What are the
7 conditions of confinement when you're in Interim
8 Level 6? Is that a segregated setting?

9 A. Oh, yes, ma'am.

10 Q. Okay. And so you talked about PNM and
11 segregation or solitary confinement at PNM. Is this
12 the same thing, but down at Southern New Mexico?

13 A. It -- it's a little bit different because
14 of the word "Interim." It's not -- it's not
15 supposed to be a permanent thing, it's supposed to
16 stay -- you get placed on the Interim Level 6 at
17 whatever facility you're at, pending whatever is
18 going on with you, and then we make a determination
19 whether to send you to PNM North or send you to
20 another general population unit. So it's supposed
21 to be a temporary thing, where there is a little
22 more permanence at PNM.

23 Q. Okay. But from the perspective of the
24 person who is living in segregation, it looks the
25 same, right, except it's a different facility, but

1 you're in segregation as you would be up North?

2 A. Yeah, there is a little bit more
3 programming at PNM North, but yes, basically.

4 Q. Okay. And so Mr. Perez was in segregation
5 or solitary confinement, then, in the Las Cruces
6 area up until June 2015, and then he goes to the
7 Penitentiary of New Mexico in Santa Fe; right?

8 A. Yes, ma'am.

9 Q. And there he's held in segregation until
10 the following April; is that right?

11 A. Yes, ma'am, that looks right.

12 Q. So he's in segregation from March 2014 --
13 March 8, 2014 until April 18, 2016; is that right?

14 A. That's correct.

15 Q. Thank you, Mr. Roark. You talked a little
16 bit about history of your interactions with alleged
17 SNM Gang members. And you talked about, I think
18 yourself orchestrating moving people out of state;
19 right?

20 A. It wasn't me. It was the Department, but
21 yes.

22 Q. But you knew about it happening?

23 A. Of course.

24 Q. And was Mr. Perez ever moved out of state?

25 A. Not that I remember, no.

1 Q. Okay. You never met with Mr. Perez?

2 A. Not that I recall ever meeting with him.

3 Q. And you wouldn't have asked to meet with
4 Mr. Perez because he's not a leader; right?

5 A. No, that's not necessarily true. I've
6 talked to other gang member inmates, but -- that
7 were leaders but no, I didn't meet with Mr. Perez.

8 Q. And he's not a leader; right?

9 A. As far as I know.

10 MS. ARMIJO: Objection, foundation.

11 THE COURT: Well, I think he's testified
12 about leadership. Overruled.

13 A. I would not consider him a leader in the
14 SNM.

15 BY MS. FOX-YOUNG:

16 Q. Thank you, Mr. Roark. You also talked
17 about some steps that the Corrections Department
18 took a number of years ago to try work with these
19 alleged SNM members, and I think you talked about
20 trying to work with a unified group of people. I
21 don't want to mischaracterize your testimony, but
22 let me just ask you this: Not everybody who is
23 alleged to be SNM agrees on everything; right?

24 A. Yeah. They're like any other
25 organization. You're going -- you're going to have

1 people that don't agree with what other people in
2 the organization are doing, that's correct.

3 Q. And there are different factions within
4 the organization. Or cliques?

5 A. I would characterize that prison gangs are
6 much like any other organization. They have people
7 that have -- yeah, people who get in friendships and
8 cliques and that kind of stuff, yes.

9 Q. And they have disagreements?

10 A. Correct.

11 Q. Have you actually been inside blue pod?

12 A. I have.

13 Q. Okay. Let's take a look at the
14 Government's Exhibit 163, which you went over with
15 the prosecutor. And I think you testified that
16 this -- this is the layout for any one of the three
17 pods in that area; is that right?

18 A. Yes, ma'am. They all look pretty much
19 alike.

20 Q. I'm going to try to zoom in, Mr. Roark.
21 But I think you explained when you were talking to
22 the prosecutor that each of the cells has a hamper
23 area right by the door, and I think it's actually
24 marked on this exhibit. Do you see there where it
25 says "bunk" and then it says "hamper area"?

1 A. Yes, ma'am.

2 Q. And in 2014, this is what the cells looked
3 like?

4 A. That's correct.

5 Q. Are you familiar with what was done to
6 create what I think was termed a handicapped cell in
7 blue pod with respect to that hamper area, and if
8 you don't know anything about it tell me that.

9 A. I don't know anything about it.

10 Q. Okay. You don't know if there is a cell
11 where that hamper area was removed?

12 A. There are cells where the hamper areas
13 have been removed, but I can't speak to specific
14 cells.

15 MS. FOX-YOUNG: Thank you, Your Honor. No
16 further questions.

17 THE COURT: Thank you, Ms. Fox-Young.

18 Ms. Duncan, do you have cross-examination
19 of Mr. Roark?

20 MS. DUNCAN: I do, Your Honor. Thank you.

21 THE COURT: Ms. Duncan.

22 CROSS-EXAMINATION

23 BY MS. DUNCAN:

24 Q. Good morning, Mr. Roark.

25 A. Good morning.

1 Q. I'd like to talk to you about your meeting
2 with Mr. Baca in 2013 -- no '14, 2014. You
3 testified on direct that Mr. Baca was transferred
4 from Southern New Mexico Correctional Facility to
5 PNM based on some concerns they had at Southern;
6 correct?

7 A. That's correct.

8 Q. And those were concerns about Mr. Baca's
9 safety?

10 A. That's correct.

11 Q. There were rumors circulating that someone
12 was going to harm him; correct?

13 A. That's correct.

14 Q. So he was involuntarily placed in Level 6
15 to keep him safe?

16 A. Yes, ma'am.

17 Q. And you met with Mr. Baca on February 6 of
18 2014; correct?

19 A. I did. I don't remember the exact date,
20 but yes, it would be around that date, yes, ma'am.

21 Q. And then Mr. Baca wrote you the letter
22 that you talked about -- talked to Ms. Armijo on
23 direct about the next day, on February 7, 2014?

24 A. Yes, ma'am.

25 Q. And you testified that following that

1 meeting, you decided to -- I think you said do a
2 slow implementation of a step-own program for the
3 SNM members; is that right?

4 A. That's accurate, yes, ma'am.

5 Q. And, in fact, a couple of weeks later, you
6 began implementing that plan; right?

7 A. That's correct.

8 Q. And I think it was on February 17, you
9 sent out a memo indicating that SNM members should
10 be given an additional contact visit?

11 A. I remember that memo, yes, ma'am.

12 Q. And then you were going to have that last
13 about 30 days, and if everything went well,
14 implement the next phase of the plan; correct?

15 A. I haven't seen the memo in a while, but
16 that sounds right, yes, ma'am.

17 Q. Would it help if I show it to you?

18 A. It might.

19 MS. DUNCAN: May I approach, Your Honor?

20 THE COURT: You may.

21 MS. ARMIJO: Bates No.?

22 MS. DUNCAN: This is Bates No. 49065.

23 A. Yes, ma'am.

24 BY MS. DUNCAN:

25 Q. So the members of the SNM began receiving

1 additional privileges on February 24, 2014; correct?

2 A. Actually, it began in December, because we
3 had changed the policy that allowed three contact
4 visits. So we had only -- because of the concerns
5 from staff. We only had two contact visits, so I
6 was adding that third contact visit.

7 Q. Okay. So as of February 24, 2014, they
8 got this additional -- so three contact visits?

9 A. That's correct, ma'am.

10 Q. And that began two weeks before Javier
11 Molina was murdered; correct, approximately?

12 A. Approximately, yes, ma'am.

13 Q. Now, you said that during the meeting with
14 Mr. Baca, you also discussed whether he would be
15 returned to Southern New Mexico Correctional
16 Facility?

17 MS. JACKS: Your Honor, again I would
18 request that this testimony, to the extent it's
19 discussing Mr. Baca's interactions with this
20 witness, be limited to Mr. Baca.

21 THE COURT: Well, the statements that Mr.
22 Baca is going to be making to Mr. Roark and Mr.
23 Roark is going to testify about, can only be used in
24 your consideration of the charges against Mr. Baca.
25 It can't be used in the consideration of the charges

1 against the other three defendants.

2 MS. DUNCAN: And, Your Honor, I have four
3 exhibits I'll be moving to admit, and my
4 understanding is the Government has no objection to
5 these exhibits. They are Defendants' Exhibits EF,
6 EG, EH, and EI.

7 THE COURT: Is that correct, Ms. Armijo?

8 MS. ARMIJO: Yes, Your Honor.

9 THE COURT: All right. And are these
10 going to contain statements of Mr. Baca?

11 MS. DUNCAN: No, Your Honor, let me
12 show -- there is one that contains statements about
13 him, and the other three are blank forms.

14 THE COURT: Anybody else, then, have any
15 objections?

16 MS. JACKS: I guess to the extent they
17 relate to limited testimony they would be limited,
18 but other than that, I don't have any objection.

19 THE COURT: Well, let's see how it goes.
20 If we see some statements by Mr. Baca, then I may
21 have to give another limiting instruction, but it
22 doesn't sound like they're filled with those.

23 All right. So Defendants' Exhibits EF,
24 EG, EH and EI will be admitted into evidence.

25 (Defendants' Exhibits EF, EG, EH, EI

1 admitted.)

2 MS. DUNCAN: Thank you, Your Honor.

3 BY MS. DUNCAN:

4 Q. So Mr. Baca was first referred to be
5 transferred from Southern New Mexico Correctional
6 Facility to PNM in 2013; is that right?

7 A. That's correct.

8 Q. And at that point, he was given a form to
9 show him that he was going to be moved and the
10 reasons for that move; correct?

11 A. That's correct.

12 Q. If I could have Defendants' Exhibit EF,
13 please. Do you recognize that document, Mr. Roark?

14 A. I do.

15 Q. So this would be the form notifying Mr.
16 Baca of the movement and the reason for the
17 movement?

18 A. Yes, ma'am. Yes, ma'am.

19 Q. Now, if we could go down a little bit to
20 the summary. So -- and so here again we see that
21 the summary of facts justifying the placement is
22 that he was in placement because you had received --
23 or the Department had received information that he
24 might be the victim of an assault if allowed to
25 remain with the members of the SNM; correct?

1 A. That's correct.

2 Q. And at the bottom of this form we see a
3 72-hour review box. Can you tell us what is that?

4 A. When an inmate is placed in segregation or
5 restrictive housing, he is entitled to a 72-hour
6 review, so usually a Chief of Security or a Unit
7 Manager will review to make sure that this is a
8 legitimate reason to keep him in segregation.

9 Q. And then after that 72-hour review, the
10 Southern New Mexico Correctional Facility staff
11 would have completed a Level 6 referral packet;
12 correct?

13 A. That's correct.

14 Q. And that is the packet -- the information
15 for the administration to decide whether someone
16 should stay in Level 6; correct?

17 A. That's correct. Yes, ma'am.

18 Q. And it is Department of Corrections'
19 procedure that an inmate receive what's called --
20 it's an initial Level 6 placement form; correct?

21 A. That's correct.

22 Q. And that's the form we just looked at?

23 A. Yes, ma'am.

24 Q. And after receiving that form, procedure
25 requires that a Level 6 placement hearing be held;

1 correct?

2 A. That's correct.

3 Q. And there is a form that notifies an
4 inmate of that hearing; is that right?

5 A. That's correct. Also.

6 Q. If we can put up Defendants' Exhibit EG.
7 And is this the form that's used to notify an inmate
8 of a Level 6 hearing?

9 A. It is.

10 Q. And if you look at the bottom -- that's
11 okay -- at the bottom of the form -- when it's given
12 to the inmate, the inmate would sign to acknowledge
13 receipt of that form; correct?

14 A. That's correct.

15 Q. So once the hearing is scheduled --
16 hearing is scheduled, who is present at that
17 hearing?

18 A. It's the unit management team.

19 Q. And is the inmate also there?

20 A. He can be, but he can choose to waive the
21 hearing. So --

22 Q. It's up to the individual?

23 A. That's correct, ma'am.

24 Q. And after the hearing, is there a notice
25 given to the inmate of whether or not -- the outcome

1 of that hearing, whether he will continued to be
2 detained in Level 6 or returned to a lower custody
3 level?

4 A. Yes, soon after that hearing.

5 Q. When you say "soon," is there a time
6 limit?

7 A. There is. I don't recall what it is, but
8 it's soon afterwards.

9 Q. And I'd like to show you what's been
10 marked as Defendants' Exhibit EH. And is this a
11 form that a person is given to notify them of a
12 decision at the hearing on a Level 6 placement?

13 A. That's -- that's correct.

14 Q. And is this form placed in the person's
15 file -- classification file?

16 A. Yes, ma'am.

17 Q. And this form notifies -- if we could look
18 at the bottom -- that the inmate is asked to sign to
19 acknowledge receipt of the form; correct?

20 A. That's correct.

21 Q. And also informed of their right to appeal
22 the decision?

23 A. That's correct.

24 Q. And in your experience, if someone is
25 being kept in Level 6, it's pretty common for them

1 to appeal; correct?

2 A. I don't know what the definition of common
3 is. I would say about half the inmates appeal.

4 Q. And but would the percentage be higher for
5 those who are involuntary placed in Level 6, as Mr.
6 Baca was?

7 A. Yeah, I don't know what the stats would
8 be, but yeah, as a general rule, I believe that to
9 be true.

10 Q. If we could see Defendants' Exhibit EI,
11 please. And is this the form that an inmate would
12 use to appeal that decision?

13 A. It is.

14 Q. After you met with Mr. Baca in February
15 2014, you decided not to return him to Southern New
16 Mexico Correctional Facility; correct?

17 A. I did.

18 Q. But you did not document that decision;
19 correct?

20 A. I didn't.

21 Q. So those forms that we saw, those blank
22 forms we saw, were not given to Mr. Baca; correct?

23 A. Not from what I did, no.

24 MS. DUNCAN: May I have a moment, Your
25 Honor?

1 THE COURT: You may.

2 MS. DUNCAN: No further questions. Thank
3 you, Mr. Roark.

4 THE COURT: Thank you, Ms. Duncan.
5 Ms. Bhalla?

6 MS. BHALLA: We don't have any questions
7 for this witness, Your Honor.

8 THE COURT: Ms. Jacks, do you have
9 cross-examination?

10 MS. JACKS: I do, Your Honor.

11 THE COURT: All right. Ms. Jacks.

12 CROSS-EXAMINATION

13 BY MS. JACKS:

14 Q. Good afternoon, Mr. Roark.

15 A. Good afternoon.

16 Q. I have -- I have just a few questions.
17 During the course of your testimony, you've been
18 referring to people as "SNM members."

19 A. Yes, ma'am.

20 Q. Okay. Would it be fair to say that that
21 means people that you or the prison believes to be
22 SNM members?

23 A. That would be fair.

24 Q. You -- you're not part of the prison gang
25 SNM, are you?

1 A. No, ma'am.

2 Q. And you don't know for sure who is and who
3 isn't a member, do you?

4 A. Yeah. I don't know how to answer that. I
5 mean --

6 Q. Well, some people admit it to you, right?

7 A. Yes, ma'am.

8 Q. And some people say it right out front,
9 "Hey, I'm in the SNM".

10 A. Yes, ma'am.

11 Q. And those guys you would know that they're
12 members?

13 A. Most of the time, yes, ma'am.

14 Q. Okay. Does the prison have a process
15 that's called validation, which is a way for -- for
16 the prison to try to follow people that they suspect
17 might be members of the SNM?

18 A. Yes, ma'am.

19 Q. And are there a series of criteria that
20 make up whether somebody can be validated as a
21 prison gang member, or not?

22 A. Yes, ma'am.

23 Q. Okay. And so -- well, first of all, Mr.
24 Sanchez has never admitted to you that he's a member
25 of SNM, has he?

1 A. No, ma'am, he hasn't.

2 Q. Okay. And with respect to this validation
3 process, is there sort of a file kept on each inmate
4 as to what the current state of the validation is,
5 whether they are suspected as a prison gang member
6 or whether they're actually validated as being a
7 prison gang member?

8 A. Yes, ma'am, there is a file on each
9 inmate.

10 Q. Okay. And do you know, on March 7, 2014,
11 what the status of Mr. Sanchez was with respect to
12 that validation process?

13 A. Not in terms of what the file says, no,
14 ma'am, I didn't.

15 Q. Okay. So you don't know if Mr. Sanchez
16 was suspected to be a prison gang member or was, in
17 fact, validated, as of that date?

18 A. Yes, I guess -- yes, that's correct, I
19 don't know.

20 Q. Okay. I -- you were using the term very
21 freely, and I guess I just want to make -- I want to
22 make sure that what -- when you use the term, I want
23 to make sure that we acknowledge that that includes
24 people that you suspect might be gang members as
25 well as people who you have validated or know from

1 personal admissions are gang members?

2 A. That's correct, ma'am.

3 Q. You talked about -- you went down to SNMCF
4 the evening that -- of the Molina homicide; correct?

5 A. I did.

6 Q. And the New Mexico Department of
7 Corrections investigation into the cause of that
8 homicide started that evening?

9 A. Yes, ma'am.

10 Q. And I believe that you testified that you
11 moved some people the next day?

12 A. I did -- we did, ma'am.

13 Q. And that included Mr. Sanchez?

14 A. It did.

15 Q. And you moved -- you made inmate movements
16 based on -- well, let me go back for a second. In
17 terms of making inmate movements after the Molina
18 homicide, was it your intent to prevent any further
19 act of violence?

20 A. That's correct.

21 Q. Okay. And so were you -- you didn't have
22 the results of your investigation by the next day,
23 did you?

24 A. I did not.

25 Q. So were you being sort of overinclusive to

1 make sure that anybody that may have possibly been
2 involved or had some information was eventually
3 moved from the unit where the homicide occurred?

4 A. I'm sorry, can you repeat the question?

5 Q. Yeah. Well, were you over inclusive in
6 trying to separate people and move people during --
7 the next day after the Molina homicide?

8 A. Yeah, I would not agree with that. I
9 think if anything, I didn't move enough people. I
10 just had limited bed space.

11 Q. Okay. So you moved people that you could;
12 right?

13 A. I moved -- based on what information we
14 had, I moved -- I moved the three inmates that I
15 thought was the most necessary to move.

16 Q. Okay. And then later in the course of
17 your investigation, did you move other inmates?

18 A. I did.

19 Q. And the Molina homicide was March 7 of
20 2014. Is there a date where you -- where the New
21 Mexico Department of Corrections' investigation into
22 that crime was complete?

23 A. I don't know what that date is, ma'am, no.

24 Q. Was it -- did the investigation go on for
25 days, weeks, months?

1 A. It went on for months, ma'am.

2 Q. And in 2014, did the New Mexico Department
3 of Corrections have a policy of housing people that
4 were validated SNM members with people that were
5 suspected SNM members?

6 A. We housed them together, ma'am.

7 Q. Okay. And why -- why would you house them
8 together?

9 A. Well, there is a couple reasons why.
10 Because we considered them all SNM members, and
11 because of -- we have limited bed space, so we have
12 to use that bed space to the best of our ability.
13 And unfortunately, because of issues within the
14 gangs, sometimes two validate people can't be
15 together and two suspected people can't be together,
16 so we just do the best we can to house them
17 together.

18 Q. And you do the best you can to house
19 people together that can get along and not have
20 problems with each other?

21 A. Yes, that's accurate, ma'am.

22 Q. So as long as -- as long as somebody who's
23 housed with validated SNM Gang members gets along
24 with them, there wouldn't be a reason to move them?

25 A. As long as they were also a suspected

1 member of that gang.

2 Q. According to the policy of the Department
3 of Corrections?

4 A. That's correct.

5 Q. Okay. Thank you very much.

6 THE COURT: Thank you, Ms. Jacks.

7 Ms. Armijo, do you have redirect of Mr.
8 Roark?

9 REDIRECT EXAMINATION

10 BY MS. ARMIJO:

11 Q. Ms. Fox-Young was asking you about Rudy
12 Perez' move to Southern back in 2014. Do you know
13 why he was moved?

14 A. From the Long Term Care Unit?

15 Q. No, no, no. Separate from -- to go
16 into -- not from the Long Term Care Unit. We're
17 talking about post Molina, moving up to the North.
18 And may I have -- do you all have hard copies when
19 you move in items to evidence?

20 MS. ARMIJO: May we --

21 MS. FOX-YOUNG: Your Honor, I'd object. I
22 think this is calling for the witness to speculate.
23 We'll see where Ms. Armijo goes, but I think he said
24 he doesn't know.

25 THE COURT: Well, I don't think he's

1 answered this question yet. Do you mind if you
2 don't have hard copies, putting the document up
3 that --

4 MS. ARMIJO: That's fine.

5 MS. FOX-YOUNG: We can put it up, Judge.

6 THE COURT: All right.

7 BY MS. ARMIJO:

8 Q. All right. And I'm looking at the top
9 of -- this view is better here, 10/03/2013, when Mr.
10 Perez was moved to Southern?

11 A. Yes.

12 Q. Okay. Do you know why he was moved to
13 Southern?

14 A. Well, that's after he got out of the Long
15 Term Care Unit, so he obviously -- he got discharged
16 from the Long Term Care Unit.

17 Q. Okay. And then he went to Southern after
18 that; correct?

19 A. He did.

20 Q. And is that where the SNM Gang members
21 were being held?

22 A. At that time, yes.

23 Q. And did he go to a pod where SNM Gang
24 members were being held?

25 A. He did.

1 Q. Now, going back to -- let's see -- yes, at
2 the top -- let's go to June -- sorry -- June of
3 2015. Thank you, that will do.

4 Okay. So June of 2015 -- we have June 17,
5 2015 is where he went to PNM; is that correct?

6 A. That's correct.

7 Q. And I believe Ms. Fox-Young was asking you
8 about his housing there at the North unit; is that
9 correct? Was he sent to PNM, specifically --

10 A. He was sent to PNM, yes, ma'am.

11 Q. Do you know why he was sent to PNM?

12 A. We were transitioning all of the SNM out
13 of the Southern to the penitentiary.

14 Q. And do you know if he -- if there were any
15 other issues with him being sent there? And if
16 you're not aware, that's fine.

17 A. No, I'm not aware of any others.

18 Q. Okay, thanks. Now, Ms. Fox-Young also
19 asked you specifically about Mario Rodriguez and
20 about being violent. What about -- do all SNM Gang
21 members -- do you feel that they are all violent?

22 MS. BHALLA: Objection, speculation, Your
23 Honor.

24 MS. JACKS: I also think it's
25 inappropriate character evidence, given the state of

1 the evidence at this point.

2 THE COURT: Yes, I'm going to sustain.

3 BY MS. ARMIJO:

4 Q. All right. You talked about the term --
5 well, I guess actually you didn't use the term, but
6 Ms. Fox-Young used the term "segregation." Is that
7 a term that the Corrections Department uses, or is
8 that a term that -- just as defense counsel was
9 using?

10 A. That's a term that has been used in the
11 past. Currently, we're using the term "restrictive
12 housing."

13 Q. Okay. And now in reference to Mr.
14 Sanchez, why was he moved out of state?

15 A. Our concern was that he would be able --
16 well, our concern was -- our concern was that he
17 would further communicate further acts of violence.

18 MS. JACKS: Your Honor, I'm going to move
19 to strike. I think he -- encompassed within that
20 answer is a conclusion that's based on testimonial
21 hearsay. And it's also invading the province of the
22 jury.

23 THE COURT: Well, he's expressed his
24 concern. That was why he did what he did. I don't
25 think it necessarily indicates hearsay. Overruled.

1 BY MS. ARMIJO:

2 Q. Now, in reference to -- if I could have up
3 Defendants' EF. And at the bottom of EF, it says
4 that there is the 72-hour review period. It says,
5 "remained in Level 4," and there is something there
6 that says -- I believe it says, "Due to information,
7 an inmate will be harmed." Is that why he was to
8 remain in Level 6; is that correct?

9 A. That's what -- I don't recognize the
10 signature, but either the Unit Manager or Chief of
11 Security made that determination, yes, ma'am.

12 Q. Okay. And do you even know if that was a
13 valid concern or whether -- I shouldn't say valid.
14 Let me rephrase the question. Do you know the
15 source of that information?

16 A. I do not.

17 Q. Do you know whether or not it was possibly
18 harm from a rival gang member?

19 A. My understanding it was from -- my
20 understanding, it wasn't.

21 MS. JACKS: I'm going to object before any
22 hearsay is blurted out from the witness stand to the
23 extent the question calls for it --

24 THE COURT: Well --

25 MS. JACKS: -- any testimonial hearsay.

1 THE COURT: Why don't you just answer yes
2 or no to the question. It's a do-you-know question,
3 just answer yes or no, then I'll determine whether
4 we're going to hear the testimony.

5 BY MS. ARMIJO:

6 Q. Do you know whether or not there was
7 information that it could have been from a rival
8 gang member?

9 A. No.

10 Q. Do you have information -- or not you, but
11 I should say, was the decision based upon -- let me
12 re-ask this, I'm sorry. Do you know what the harm
13 was -- the alleged harm that was to come to him,
14 the source of it?

15 A. No, I don't.

16 Q. And is this something that is routinely
17 done when information is received about inmates that
18 possibly could be harmed?

19 A. At that time in our policy, the answer is
20 yes.

21 Q. And could the information have been false?

22 A. Yes, ma'am.

23 Q. Could the information have been true?

24 A. Yes, ma'am.

25 Q. And so regardless of -- based on policy,

1 would you have moved him just based on any potential
2 threat? Him being Mr. Baca, if you received that
3 information?

4 A. Yes, ma'am.

5 Q. And in reference to your meeting with Mr.
6 Baca, was that in reference to a formal appeal that
7 he filed, or is that based upon your decision
8 whether or not to move him back down to Southern and
9 your programming for SNM Gang members?

10 A. Yes, ma'am. It was not a formal hearing.
11 It was just something I was doing to determine
12 whether or not I could work with the SNM in the same
13 way I worked with the Los Carnales.

14 Q. So you would not have filled out those
15 forms, then, that Ms. Duncan was showing you in
16 reference to your meeting with Mr. Baca?

17 A. That's correct. If I made the decision to
18 move him at that point, I would have had the Unit
19 Manager do those forms.

20 Q. But you were not acting on an appeal of
21 his?

22 A. I was not.

23 Q. Now, Ms. Jacks was asking you about Daniel
24 Sanchez and the validation processes. Could
25 somebody not be a validated member by New Mexico

1 Corrections but still be a gang member? I'm not
2 asking about anybody in particular.

3 A. Yes.

4 Q. I'm just saying, do you believe that
5 Corrections has every gang member validated, or
6 could there be other gang members out there in the
7 prison system that you do not have validated by
8 Corrections standards?

9 A. That's correct. There could be gang
10 members we don't know about.

11 Q. And if somebody is placed in a housing
12 unit with SNM Gang members, do they have the option
13 of going to their caseworker or STIU and saying,
14 "Hey, I need out of here, I'm not a gang member, I
15 do not want to be housed with them"?

16 A. Yes, ma'am, they do have that option.

17 Q. And in reference to -- sorry -- if we
18 could have up 162. Oh, I'm sorry.

19 Now, I believe you've already testified
20 that these are the three different pods; correct?

21 A. That's correct.

22 Q. And on here I believe Ms. Fox-Young was
23 talking about Mr. Perez' cell. As this diagram is,
24 it doesn't show a handicapped cell on it, does it?

25 A. It does not.

1 Q. All right. And is it possible that
2 provisions were made for Mr. Perez in order to have
3 his walker in there or -- and if you're not able to
4 testify, that's fine.

5 A. I just don't know.

6 Q. All right. And lastly, is there -- the
7 lines that separate, what exactly separates the
8 pods? Can you tell us about that. There are lines
9 there, but how is it separated?

10 A. It's a concrete wall.

11 Q. And are there doors in between the walls,
12 connecting the two?

13 A. There are doors on the end towards the
14 cells that are fire exit doors, yes.

15 Q. And is that between -- and I'm just going
16 to use the terms -- I know they're not the official
17 terms -- the blue pod and the yellow pod; is that
18 correct?

19 A. That would be a fire exit door between
20 them, yes.

21 Q. On the upstairs or the downstairs or both?

22 A. Both.

23 Q. And then would there also be, I'm
24 assuming, from the yellow pod to the green pod, as
25 well?

1 A. That's correct, ma'am.

2 Q. And do you know if inmates are able to
3 pass notes under there?

4 A. It's possible, ma'am.

5 Q. Have you seen that happen?

6 A. I've seen that happen, yes, ma'am.

7 MS. ARMIJO: Thank you. No further
8 questions.

9 THE COURT: Thank you, Ms. Armijo.

10 All right. Mr. Roark, you may step down.
11 And is there any --

12 MS. JACKS: I have some brief redirect --
13 I mean, recross.

14 THE COURT: All right. Do you have some,
15 as well?

16 MS. FOX-YOUNG: No, Your Honor. I just
17 wanted to tell the Court that we'd like Mr. Roark to
18 be subject to recall.

19 THE COURT: All right. Ms. Jacks.

20 MS. JACKS: Thank you.

21 Could we have 162, please. Thank you.

22 RECROSS-EXAMINATION

23 BY MS. JACKS:

24 Q. Mr. Roark, Ms. Armijo just asked you some
25 questions about the door between the blue pod and

1 the yellow pod at Southern New Mexico Correctional
2 Facility, and I want to direct your attention to
3 those same doors. Okay?

4 A. Yes, ma'am.

5 Q. In blue pod, do the security cameras
6 record -- first of all, do the security cameras
7 capture the doors between blue pod and yellow pod?

8 A. Yes, they should be able to see the fire
9 doors.

10 Q. Okay. And are the -- is the security
11 camera video recording 24 hours a day, seven days a
12 week?

13 A. It is.

14 Q. And is it stored on some sort of computer
15 system at Southern New Mexico Correctional Facility?

16 A. It is.

17 Q. And do you happen to know how long the
18 video -- how many days of video can be stored --
19 back in 2014?

20 A. Yeah, the older system, it didn't store as
21 many days, but I don't remember what those days are,
22 ma'am.

23 Q. Is it more than a week?

24 A. It is more than a week.

25 Q. Is it more than two weeks?

1 A. It is more than two weeks.

2 Q. Is it more than a month?

3 A. Now, we're getting close, ma'am. I just
4 don't remember the exact time.

5 Q. Somewhere around a month, at least?

6 A. Correct. And I know it has something to
7 do with the memory and how much movement is going
8 on, so it varies.

9 Q. Okay, okay. I want to ask you the same
10 questions about yellow pod. Are there security
11 cameras in yellow pod?

12 A. Yes, ma'am.

13 Q. And do the security cameras in yellow pod
14 capture those same doors -- I think you -- did you
15 call them fire doors?

16 A. The fire exit doors, yes, ma'am.

17 Q. Okay. Between yellow pod and blue pod?

18 A. Yes, ma'am, they do.

19 Q. And do those security cameras also record
20 24 hours a day, seven days a week?

21 A. That's correct.

22 Q. And are those security cameras also
23 backing -- the recordings also backing up to some
24 sort of computer system that has roughly a month's
25 worth of storage, depending on the circumstances?

1 A. Yes, ma'am.

2 Q. And finally, are you aware of whether Mr.
3 Sanchez has a brother named Ronald Sanchez?

4 A. I do know.

5 Q. Does he?

6 A. He does.

7 Q. And is Ronald Sanchez an inmate in the New
8 Mexico Department of Corrections?

9 A. He is.

10 Q. And on March 7, 2014, the day of the
11 Javier Molina homicide, where was Ronald Sanchez
12 housed?

13 A. I don't remember, ma'am.

14 Q. Do you know whether he was housed with his
15 brother, Daniel, in blue pod?

16 A. I don't recall, ma'am.

17 MS. JACKS: Okay. Thank you. I have
18 nothing further.

19 THE COURT: Thank you, Ms. Jacks.

20 Anything further, Ms. Armijo?

21 FURTHER REDIRECT EXAMINATION

22 BY MS. ARMIJO:

23 Q. Do you know if all the cameras were
24 working on --

25 A. I don't know --

1 Q. -- on March 7 of 2014?

2 A. I'm sorry, I don't know that.

3 Q. All right. And since then, Corrections
4 has improved their camera systems a great deal?

5 A. We have.

6 Q. Okay. But you personally can't say which
7 of the cameras in blue pod or yellow pod were
8 working back on March 7 of 2014.

9 A. That's correct.

10 MS. ARMIJO: Nothing further, thank you.

11 THE COURT: All right. Thank you, Ms.
12 Armijo.

13 All right, Mr. Roark, you may step down.
14 Thank you for your testimony. You're not excused
15 from the proceedings, so you'll have to remain
16 outside of the courtroom for the remainder of the
17 proceedings until you are excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Roark.

20 All right. Does the Government have its
21 next witness or evidence? Mr. Beck?

22 MR. BECK: Yes, Your Honor, the United
23 States calls Gregg Marcantel.

24 MS. FOX-YOUNG: Your Honor, the defense
25 doesn't require that Mr. Roark remain out there.

1 We're happy to call him. I wanted to make it clear.

2 I'm not sure Mr. Roark knows he can --

3 THE COURT: Mr. Roark, you don't need to
4 stay outside of the courtroom today, but you just
5 can't come back in while the proceedings are taking
6 place. You understand that?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Thank you, Mr. Roark.

9 All right. Mr. Marcantel, if you'll come
10 up and take the witness box on my right, your left,
11 before you're seated, my courtroom deputy, Ms.
12 Standridge, will swear you in.

13 GREGORY PAUL MARCANTEL,
14 after having been first duly sworn under oath,
15 was questioned, and testified as follows:

16 THE CLERK: Please be seated. State and
17 spell your name for the record.

18 THE WITNESS: Sure. My name is Gregory
19 Paul Marcantel. Gregory, G-R-E-G-O-R-Y. Paul,
20 P-A-U-L. Marcantel, M-A-R-C-A-N-T-E-L.

21 THE COURT: Mr. Marcantel, Mr. Beck.

22 DIRECT EXAMINATION

23 BY MR. BECK:

24 Q. Good afternoon, Mr. Marcantel.

25 A. Good afternoon.

1 Q. Are you here this afternoon as a victim in
2 this case?

3 A. Yes, sir.

4 Q. At one time were you the Secretary for the
5 Department of Corrections in New Mexico?

6 A. I was.

7 Q. When was that?

8 A. I was sent over temporarily from DPS after
9 retirement from police work in -- around September
10 of 2011. I was officially appointed the following
11 November of 2011 and confirmed the first time in the
12 legislative session in January or -- yeah, January
13 of 2012.

14 Q. Were you later confirmed again as
15 Secretary of Corrections?

16 A. I was. I guess it's state law that the
17 second term of the Governor that you have to be
18 reaffirmed so -- or confirmed, excuse me. So I
19 believe confirmed -- what would that have been,
20 '12 -- I think '15 or '16. Whatever that
21 legislative -- the first legislative term of the
22 Governor's second term.

23 Q. Are you still the Secretary of
24 Corrections?

25 A. No, sir.

1 Q. When did you leave that position?

2 A. I retired in October of '15, I think,
3 yeah.

4 Q. What did you do before 2011, when you
5 became the Secretary?

6 A. I was a Police Officer with the Bernalillo
7 County Sheriff's Department.

8 Q. At some point were you the Deputy
9 Secretary of the Department of Safety?

10 A. Yes, sir. After I had retired from the
11 Sheriff's Department originally, when I went to work
12 for this Governor, I originally took the position of
13 Deputy Secretary at the Department of Public Safety,
14 and it was there that I was sent over with a
15 leadership change in the Corrections Department. I
16 was sent over originally temporarily, but that
17 turned out to be permanent at the Correction
18 Department.

19 Q. You said that you were with -- I think you
20 said the Bernalillo County Sheriff's Office before
21 that. Is that what you said?

22 A. Yes, sir.

23 Q. And how long were you there?

24 A. Approximately 19 years there with the
25 Bernalillo County Sheriff's Department.

1 Q. And what did you with the Bernalillo
2 County Sheriff's Department?

3 A. Well, I started as anyone else -- I
4 started as a line level Patrol Officer. Eventually
5 went into criminal investigations. I remained there
6 for many, many years as a Detective. Worked most of
7 the time as a Detective in the Homicide Unit.
8 Eventually, I was promoted to Sergeant. And
9 eventually I was promoted to Lieutenant and
10 eventually Captain, and I retired at that rank.

11 Q. Did you -- as a Sergeant and Lieutenant,
12 did you oversee specific sections of the Bernalillo
13 County Sheriff's Office or a specific department?

14 A. Yes, sir. I mean, at first as a Sergeant
15 I was in the field, and so I was running a squad out
16 of the South area command in Bernalillo County.
17 Eventually put back into the Criminal Investigations
18 Division. Originally brought back temporarily to
19 oversee a mass murder task force regarding the East
20 Mountain triple homicide that happened many years
21 ago.

22 Once that was over, I was assigned over
23 the homicide unit as a sergeant -- Violent Crimes
24 and Homicide. Was there until I was promoted to
25 Lieutenant, and as a Lieutenant, I remained in the

1 Criminal Investigations Division, and there I
2 oversaw the Homicide, Violent Crimes, Gang Unit --
3 I'm trying to think -- and Criminalistics, crime
4 scene techs.

5 Q. You said the South Area Command?

6 A. Yes, sir.

7 Q. Where is that?

8 A. It's in the South Valley of unincorporated
9 Bernalillo County.

10 Q. What did you do before you were a
11 Bernalillo County Sheriff's Deputy?

12 A. I worked originally -- after discharge
13 from the Marine Corps, I moved to New Mexico, and
14 the first law enforcement job that I took here was
15 with the town of Bernalillo, not to be confused with
16 Bernalillo County. And there I was the Assistant
17 Chief. It was the rank of Captain, the Assistant
18 Chief in that small bedroom community there for a
19 couple of years before I went over to BCSO,
20 Bernalillo County.

21 Q. And how long -- I think you said you were
22 in the Marines?

23 A. Yes, sir.

24 Q. How long was that?

25 A. Four years.

1 Q. So all told between the Marine Corps up
2 until the time you left the Department of
3 Corrections, how many years of law enforcement or
4 military experience is that?

5 A. 24 or so of law enforcement.

6 Q. With the Bernalillo County Sheriff's
7 Office, was that the first time you encountered the
8 SNM Gang?

9 A. Yes, sir. Working in the homicide unit
10 I'd handled and -- and overseen --

11 Q. Mr. Marcantel, just -- it was yes -- I
12 don't mean to cut you off.

13 A. That's okay, yes, sir, I did.

14 Q. Thank you. And approximately when was
15 that?

16 A. The --

17 Q. The first time that you experienced the
18 SNM Gang with the Bernalillo County Sheriff's
19 Office?

20 A. Well, sir, very early into my experiences
21 there. I don't remember a specific date, or
22 honestly I don't remember a specific event to be the
23 first time.

24 Q. Early on in your time there, you said?

25 A. Yes, sir.

1 Q. You said you were there for 19, 20 years?

2 A. Yes, sir.

3 Q. So that would have been at least 20 years
4 ago now?

5 A. More than that. More than that.

6 Q. I want to talk to you a little bit more
7 about your time with Corrections. Tell me,
8 generally, what were your duties as Secretary of
9 Corrections?

10 A. I was a Cabinet Secretary, so, you know,
11 the duties were everything, really. But it was the
12 Executive Management of the organization.
13 Operationally I had deputies, and we had wardens,
14 and prison directors, and parole directors, and
15 those sorts of things. But my responsibilities were
16 to the Governor, and it was executive management of
17 the entire department.

18 Q. How many -- and I'm just asking for an
19 estimate here. Approximately how many Corrections
20 staff did you oversee in that position?

21 A. Well, we were staffed, sir, for 24 --
22 2500, as I recall. But the staffing shortages, we
23 struggled the entire time I was there, so it was
24 over 2,000. I don't remember a specific number.

25 Q. And what about inmates?

1 A. Inmates bubbled around 7000 to probably
2 7400 when I left. And they were contained within 11
3 different prisons across the state. Once they were
4 paroled, they were overseen by about 42 different
5 offices throughout the state for probation and
6 parole.

7 Q. When you came in as Secretary of
8 Corrections, what were your policy goals for the
9 Corrections Department?

10 A. It was sort of an interesting experience
11 here, and I would assume that's not a yes and no
12 kind of question, because it's one that requires
13 sort of some explanation, at least on the
14 transformation that I went through, even personally,
15 as a professional.

16 I had spent my career sort of shaping
17 public safety through the lens of a cop. And so by
18 virtue of that, I frequently when I would arrest
19 people, I felt that I was doing my job and that that
20 was good public safe -- safety work I was doing,
21 and, in fact, it was.

22 What happened to me when I was assigned
23 over to the Corrections Department is that I'd never
24 worked on that end of the criminal justice system.
25 I'd never --

1 Q. What end is that?

2 A. The back end. The very end of the
3 criminal justice system. My entire life had been
4 spent on the front end, essentially. And perhaps
5 that was a weakness, you know, when I first got
6 there, but I think the strength was that I had to
7 ask a lot of questions. So I began to ask
8 questions, I began to learn things that I had
9 overlooked my entire life in terms of being a cop
10 and --

11 Q. What were some of those things?

12 MR. LOWRY: Objection, Your Honor,
13 relevance.

14 THE COURT: I think I see the relevance.
15 Overruled.

16 A. Well, something that I never had to think
17 about, and I think frequently we all tend to forget
18 about, is that we have this thing called the
19 Constitution that pretty much guarantees that almost
20 every man or woman that's sentenced to the prisons
21 that I now had to oversee, well, they were going to
22 return back to our neighborhoods, whether we liked
23 it or not.

24 And so for me, public safety began to take
25 on a different definition. I realized that what

1 happens in prisons by virtue of that reality and by
2 virtue of the fact that we run upwards of
3 40-some-odd percent across this nation in terms of
4 recidivism, that what we did in the prison systems
5 had to matter for public safety.

6 And what I was going to do, instead of
7 arresting the hows and whats of my life from that
8 point, had to be less that now, and more what we
9 could do to do our best to assure that people
10 assigned to our responsibility improved when they
11 left.

12 BY MR. BECK:

13 Q. So what steps did you take to make sure
14 that those people improved when they left?

15 A. Well, we had to take a close look at
16 things like programming, and we had to take a close
17 look at ourselves. And so one of the things that we
18 did is we knew very early into it -- at least I
19 learned, we knew because even the executive staff
20 understood that -- that we were one of the leaders
21 across the state -- or -- excuse me, in the nation
22 in terms of our use of segregation.

23 Q. What does that mean, "segregation"?

24 A. Well, segregation -- and it's used and
25 it's referred to by many terms. You'll hear

1 "restrictive housing" and you'll hear "solitary
2 confinement," all sorts of things. But it's the
3 most restrictive form of holding an inmate that you
4 could possibly have. We're talking 23 hours a day,
5 lockdown cell without social contact with others.

6 Q. So what did you do about New Mexico being
7 one of the highest in the nation for restrictive
8 housing?

9 A. Well, sir, I knew that we had experienced
10 a riot on February 2, 1980; that it sort of changed
11 things, at least in my estimation. I don't think we
12 did it on purpose, but my estimation, based on the
13 experiences as a Corrections Secretary is that I
14 think we unwittingly began to size up our success as
15 a prison system not on how public safety could be
16 achieved through what happens and what we do in
17 prison, and more on keeping our prisons just quiet
18 and riot free.

19 I understand that, I get it. I get how
20 important that goal was following what is probably
21 still today the most tragic prison riot in the
22 nation's history.

23 But I knew, based on my experiences as a
24 policeman, that it had to be more than that, and so
25 we had to look at ourselves really strong. And

1 segregation -- we, for example, I hate to admit it,
2 but historically, we would hold people in
3 segregation, and they might be released directly
4 from these restrictive environments back into our
5 neighborhoods. And then I think the Corrections
6 field would sit back and scratch their head and
7 wonder why didn't they do well when they reentered
8 our neighborhoods.

9 And so bring -- bringing in an outside
10 organization like the Barrett Institute of Justice
11 was very important to me, to make sure that they
12 helped us understand how we could fix ourselves.

13 MR. LOWRY: Your Honor, can I object to
14 the narrative form of --

15 THE COURT: Try to break it up. More
16 questions than answers, so that Mr. Lowry can object
17 if he needs to.

18 A. I apologize.

19 BY MR. BECK:

20 Q. That's all right. It sounds like you
21 brought in an outside agency to help you with the
22 use of segregation?

23 A. I did.

24 Q. What agency was that?

25 A. The Barrett Institute of Justice.

1 Q. And -- and did they give you
2 recommendations after that?

3 A. Yes, sir. They gave us lots of great
4 recommendations, a lot to work from.

5 Q. Based on their recommendations, what steps
6 did you put in place to reduce the use of
7 segregation?

8 A. Well, from my position, I set goals. I
9 wanted -- I wanted -- we were at a rough -- almost
10 11 percent of our population was being held in
11 segregation and I wanted that below 5 percent. I
12 believed that we could maybe even get it lower than
13 that, but that was a start.

14 And frankly, the rubber met the road with
15 people like Jerry Roark, people like Joe Booker, who
16 was my deputy, who had this huge and very rich
17 amount of experience in doing the things that we
18 needed to do.

19 Q. So Mr. Marcantel, did you put in steps
20 places to bring some specific inmates that were on
21 lockdown, try to bring them out of segregation or
22 lockdown?

23 A. Yes, sir. We -- we wanted to make sure
24 that segregation was something that was driven by
25 conduct, not by label, and so from -- historically

1 just the gang label, or at least the STG, the
2 Security Threat Group label, driving your
3 segregation. We wanted to make sure it was driven
4 by conduct and behavior. And so --

5 Q. Let me stop you there one second.

6 A. Sure.

7 Q. I don't know that we're all familiar with
8 what the Corrections Department means by an "STG."
9 What is an STG?

10 A. As I know it, it's the formal label for a
11 process of validation that someone far more expert
12 would have to -- than I, would have to explain in
13 detail, but it's a process of validation that has
14 set criteria that has to be put in place before a
15 group, a gang, or some organized enterprise in a
16 prison can be labeled as a security threat group, a
17 direct threat to the prison system.

18 Q. So it sounds like that's a label for a
19 particular gang?

20 A. That's correct.

21 Q. Was the SNM an STG for the Department of
22 Corrections?

23 A. It was, yes, sir.

24 Q. And so what did you want to do with the
25 STGs?

1 A. Well, obviously, what we wanted was to do
2 our best to set up a set of circumstances that
3 people could choose another direction. And I
4 realize how hard that is, and so there were programs
5 that we created like a Restoration to Population
6 Program that put out, for lack of a better term, a
7 social contract that you didn't have to necessarily
8 disclaim your gang. But if you would just agree
9 with Corrections officials to not commit crimes in
10 furtherance of that gang, then we would create a
11 special management unit where you could live freely
12 and get programming instead of the alternative
13 segregation.

14 Q. Did you also initiate a process in which
15 the STGs could be placed in less restrictive
16 housing, in less restrictive categorized housing?

17 A. Yes, sir.

18 Q. What was that?

19 A. Well, one was a partnership that we had
20 with Joni and Friends. Joni and Friends is an
21 organization that's set up to refurbish old
22 wheelchairs that have sort of been discarded. We
23 usually would receive them by contract with them, a
24 couple hundred at a time in a CONEX box. We had a
25 program put together where we train the inmates to

1 refurbish, bring them up to new. When we got that
2 CONEX box, then Joni and Friends would ship those
3 wheelchairs off to other nations where children who
4 didn't have an ability to walk could have a
5 wheelchair.

6 Q. Now, was this wheelchair program in place
7 before you became Secretary of Corrections?

8 A. No, sir.

9 Q. Before you became Secretary of
10 Corrections, were the STGs like SNM placed in a
11 particular level of housing or restrictive housing?

12 A. Yes, sir. As I recall, because they were
13 designated an STG, a Security Threat Group, they
14 were housed at what was termed as the Level 6, which
15 is the most restrictive; it's segregation.

16 Q. And in 2013 -- I don't want you to get
17 into what you -- what you may have said -- in 2013,
18 did you have a conversation with certain SNM inmates
19 about reducing the restrictions placed on their
20 housing and trying to move them back into
21 population?

22 A. I -- I remember having one with members
23 after we had began the program. If you're referring
24 to one that we did ahead of the program, I may have,
25 sir, I'm just not remembering it right now.

1 Q. The one -- the one after you started the
2 program, is that the one after the Molina homicide,
3 or was there one other besides that?

4 A. There was one occasion that I believe, and
5 again, I don't want to misstate because some of this
6 stuff sort of runs -- I can't remember dates, but --

7 Q. Of course.

8 A. -- but there was one that we had opened up
9 visitation. We wanted to make sure that we were
10 connecting folks with their families, because we
11 know that helps reduce recidivism. And some drugs
12 were brought in. And I remember having a
13 conversation to make sure that we understood what
14 success was going to look like in the program.

15 Q. And could that have been 2013?

16 A. It could have been.

17 Q. What was your intent in speaking with
18 those inmates after you had allowed them to have
19 more visits? What were you trying to do?

20 A. I guess I just wanted to do with them what
21 I would want if I were in their place. I just want
22 to know, I mean -- in my entire career, all I really
23 want to know is what success looks like. And then I
24 can make decisions based on that. And that's all I
25 want.

1 MR. LOWRY: Your Honor, I'm going to
2 object at this point as nonresponsive to the
3 question.

4 THE COURT: Overruled.
5 BY MR. BECK:

6 Q. Would you like me to repeat my question?

7 A. Sure.

8 Q. I asked, when you were speaking with these
9 inmates, after you tried to let them have more
10 family visits, what was your intent in speaking to
11 them? I thought you were talking about what does
12 success look like.

13 A. That's what it was. I wanted them to
14 understand that we were going to have -- we weren't
15 going to have drugs under these circumstances, and
16 that we were -- our goal was pro-social, not
17 pro-criminal prisons. And that if, for example,
18 more drugs came in, that I didn't want them to blame
19 me for them leaving this program. I wanted them to
20 understand that they clearly understood the rules
21 and that if that happened, they were going to be
22 giving me back what I was trying to give them. I
23 wanted it to be clear.

24 Q. Were you trying to make clear to them that
25 by giving them more social visits, that if something

1 else happened, in your eyes, you would have to take
2 those privileges away?

3 A. Absolutely.

4 Q. At some point, did you invite TV stations,
5 producers, into the New Mexico prison system?

6 A. Yes, sir, I did.

7 Q. When was that?

8 A. I don't remember the time. I don't
9 remember the date. I do remember that it was
10 important for me to try to do this.

11 Q. One second there, Mr. Marcantel. I'm not
12 asking for a date. Do you have a year range?

13 A. '15 -- maybe 2015, yeah.

14 Q. And what was your purpose in bringing
15 these TV channels or TV shows into the prisons?

16 A. Well, there was one show, and I was trying
17 very hard to bring the staffing levels up in the
18 prison. Pay, and lots of other things were
19 aggravating our ability to bring those staffing
20 levels up to where I wanted them to be, so I had an
21 idea that perhaps if we more clearly told the story
22 of what these men and women do, that we may cause
23 them to be better appreciated, and potentially
24 assist me in my argument for funding for the raises.

25 Q. Did you also want the public to get a

1 better idea of what it's like within the prison
2 walls?

3 A. Absolutely. That was part of the
4 strategy.

5 Q. Have you ever interacted with the
6 Defendant, Anthony Ray Baca?

7 A. Once.

8 Q. And don't tell me what he said, if he said
9 anything, but when was that?

10 A. It was in the days, as I recall, following
11 the murder of Javier Molina.

12 Q. Did he say anything to you?

13 A. No.

14 Q. Why did you speak with Mr. Baca after the
15 Javier Molina homicide?

16 A. Well, there was more than one reason, sir.
17 One is I wanted -- when Mr. Molina was murdered, it
18 put at risk everything that we were trying to do to
19 reform this. There was lots of people who had a
20 variety of different ideas about why we shouldn't be
21 letting people out of segregation.

22 Q. And how did the Javier Molina incident
23 affect that?

24 A. It creates fear. And it creates anecdotes
25 for people to say that we shouldn't be doing what

1 we're doing. It creates fear for my staff at the
2 time -- our staff, and it was a very crucible moment
3 in terms of what we were trying to do to bring a
4 little more health to the prison system.

5 Q. And by "bring more help to the prison
6 system," that's what you and I were talking about
7 just a few minutes ago, trying to reduce the
8 restrictions on STGs. Is that what you meant?

9 A. Reduce the restrictions. I mean, increase
10 programming, make sure that there is better
11 transitions from prison to the community, a host of
12 different things that we were trying to do. But as
13 the murder related, it put at risk probably greatest
14 the work we were doing on segregation.

15 Q. So what did you do then?

16 A. Well, immediately when I was alerted, I
17 drove down to Southern where the murder happened,
18 and wanted -- my main objective -- we had plenty of
19 people from our Security Threat personnel, to the
20 Director, and all these others. My main objective
21 was to go down and speak with staff to make sure
22 that they understood that it was important that we
23 continue to do our work in this area, that we can't
24 let something like this be a setback.

25 Q. And did you speak with your staff about

1 it?

2 A. Yes, sir.

3 Q. At some point, it sounds like you spoke
4 with Mr. Baca?

5 A. I did.

6 Q. Why did you do that?

7 A. Because I wanted him to know, I wanted
8 the -- everyone else that maybe from my staff -- I
9 wanted them to know that you cannot do this. You
10 can't kill people in the prison system.

11 Q. Who else did you speak with?

12 A. There were two others.

13 Q. Inmates, I mean.

14 A. Well, as I recall, I think I had the
15 opportunity to speak to all in the gymnasium. I
16 remember they were assembled in the gymnasium, and I
17 basically did the same thing, as I explained to them
18 all that this is not something that we can accept,
19 and if it continues, that we'll be interstate
20 compacting more people out; that we can't allow the
21 influence.

22 Q. You said "interstate compacting." Did you
23 speak with any other inmates, sir, individually,
24 face-to-face besides Mr. Baca?

25 A. There were two others that were being

1 transported out with Mr. Baca. I want to say it was
2 Mr. Sanchez. And the other I don't remember.

3 Q. Mr. Sanchez -- is that Daniel Sanchez
4 sitting at the front table to your left?

5 A. Yes.

6 MR. BECK: Let the record reflect he
7 indicated, it's the defendant Daniel Sanchez.

8 THE COURT: The record will so reflect.

9 BY MR. BECK:

10 Q. Did Mr. Sanchez say anything to you when
11 you talked to him?

12 A. No.

13 Q. What was your purpose in talking to Mr.
14 Sanchez?

15 A. The same.

16 Q. I think you were talking about people
17 being shipped out of state on an interstate compact.
18 What happened?

19 A. I'm not sure that I understand the
20 question, sir.

21 Q. What is an interstate compact?

22 A. Oh, okay. Interstate compact system is an
23 agreement that's set up across the nation for the
24 exchange of prisoners to sort of help manage -- help
25 one another manage prisons.

1 Q. And after the Javier Molina homicide, did
2 you coordinate shipping those three inmates out of
3 state?

4 A. I didn't personally, no. I wouldn't have
5 known how to coordinate all of that. I assigned
6 that to our Deputy Secretary of Operations, Mr. Joe
7 Booker.

8 Q. And were Mr. Baca and Mr. Sanchez shipped
9 out of state after that Molina homicide?

10 A. I think Arizona.

11 Q. Arizona?

12 A. Yes, sir.

13 Q. Mr. Marcantel, at some point did you learn
14 that there was a hit or a murder order out on you?

15 A. Yes, sir.

16 Q. When did that happen?

17 A. I don't remember the date. I just
18 remember the circumstances.

19 Q. What were those circumstances? And I
20 don't want you to tell me what anyone told you. But
21 what were the circumstances?

22 A. The circumstances were that I had an
23 appointment with Special Agent Acee. I kept that
24 appointment. He came into my office and delivered
25 that information.

1 Q. And that information -- did you learn that
2 there was an order to murder -- to hit you?

3 A. Yes, sir.

4 MS. DUNCAN: Your Honor, I'm going to
5 object. This is calling for hearsay.

6 THE COURT: Yeah, sustained.

7 MS. DUNCAN: And I'd ask that the answer
8 be stricken.

9 THE COURT: It will be stricken from the
10 record, and the jury will disregard it.

11 BY MR. BECK:

12 Q. After that meeting with Special Agent Acee
13 and Mr. Myers, were any precautions put in place for
14 you?

15 A. Yes, sir.

16 Q. What happened?

17 A. There were technologies applied to my
18 life. At times during it all, there were armed
19 people stationed at my home. Those sorts of things.

20 Q. What do you mean, technologies applied to
21 your life?

22 MS. DUNCAN: Your Honor, I'm going to
23 object to this as well. This is irrelevant to the
24 charges against --

25 THE COURT: How is this relevant to the

1 charges?

2 MR. BECK: Your Honor, Mr. Marcantel is
3 the victim, and these technologies, the armed
4 guards, these are -- this is how this information
5 affected his life. It's how he's had to change the
6 way he operates. That's how his life has been
7 affected. So it's certainly relevant to the issues
8 here.

9 THE COURT: I'm going to sustain the
10 objection.

11 BY MR. BECK:

12 Q. Did you feel -- based on what you knew,
13 did you feel you were in harm's way after that
14 meeting?

15 MS. DUNCAN: Your Honor, again --

16 MR. LOWRY: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. BECK:

19 Q. Mr. Marcantel, you and I met over the
20 phone about a week ago; is that right?

21 A. That's correct.

22 Q. And I told you where I thought in this
23 trial you'd be testifying, didn't I?

24 A. Yes, sir.

25 MR. LOWRY: Objection, Your Honor,

1 relevance.

2 THE COURT: Well, that's a little hard to
3 determine. But we may see some relevance.

4 Overruled.

5 BY MR. BECK:

6 Q. And that wasn't today; you didn't expect
7 to testify today, did you?

8 A. No, sir.

9 Q. You didn't -- did you expect to testify
10 this week?

11 MR. LOWRY: Your Honor, can we approach
12 the bench?

13 THE COURT: Yeah, we better.

14 (The following proceedings were held at
15 the bench.)

16 THE COURT: What do you want him to say?

17 MR. BECK: Just that he's here testifying
18 so he can watch the trial.

19 MR. LOWRY: That's just -- he's trying to
20 back door the Victim Rights Act, Your Honor. And I
21 should have objected the first thing. He's not a
22 victim. He's an alleged victim in the eyes of this
23 Court and a jury. This again is invading the
24 province of the jury to classify him as a victim at
25 this stage of the proceedings, and it's not --

1 THE COURT: I guess I don't see how it is
2 relevant to my ruling that he couldn't sit in until
3 after he testified. So let's move on from here.
4 I'll sustain the objection.

5 (The following proceedings were held in
6 open court.)

7 THE COURT: All right. Mr. Beck.

8 BY MR. BECK:

9 Q. Mr. Marcantel, how many STGs were there in
10 the Department of Corrections during your tenure
11 there?

12 A. As I recall, there were two.

13 Q. Which were those?

14 A. The SNM, which I think you've probably
15 already identified those acronyms, and Los Carnales.

16 MR. BECK: May I have a moment, Your
17 Honor?

18 THE COURT: Certainly.

19 BY MR. BECK:

20 Q. I think you said earlier -- you may have
21 said earlier that you left the Department of
22 Corrections in 2015. Did you leave the Department
23 of Corrections in 2016?

24 A. Yes, absolutely. I'm sorry. Absolutely.
25 I just realized it was all of '17, and now we're

1 into '18, yeah.

2 MR. BECK: Nothing further, Your Honor.

3 Pass the witness.

4 THE COURT: Thank you, Mr. Beck.

5 Ms. Duncan, Mr. Lowry, do you have
6 cross-examination of Mr. Marcantel?

7 Mr. Lowry.

8 CROSS-EXAMINATION

9 BY MR. LOWRY:

10 Q. Good morning, Mr. Marcantel.

11 A. Good morning, sir.

12 Q. I believe you said when you came into your
13 position as the Cabinet Secretary one of your goals
14 was to assist bringing up the morale of the
15 department?

16 A. I don't recall saying that. But that
17 certainly is, I think, a goal for a man or woman in
18 that position.

19 Q. Well, your goal for inviting the
20 television series in to filming was to advance
21 recruitment, if you will?

22 A. That wasn't my initial goal, to clarify
23 it, sir. When I began to realize that some of our
24 prisons were being ran on 50 percent vacancy rates
25 and we were not able to hire anyone, I realized

1 there were certain things like pay and those sorts
2 of things that needed to come up.

3 Q. And as part of addressing that, you hired
4 a media consultant, Alex Tomlin?

5 A. No, sir.

6 Q. You did hire Alex Tomlin.

7 A. She was the Public Affairs person for the
8 entire department. So she was responsible for
9 everything from IPRA's to news contacts, and those
10 sorts of things.

11 Q. Fair to say, her salary was significantly
12 more than the line CO, isn't it?

13 A. Oh, yes, sir.

14 Q. That didn't go over so well with the
15 correctional officers that -- under your employ, did
16 it?

17 MR. BECK: Objection, Your Honor. Outside
18 the scope.

19 THE COURT: No, I think it's within.
20 Overruled.

21 A. I think there was one point at the end,
22 when she was ultimately promoted to Deputy Secretary
23 of Administration. That's when that salary didn't
24 go over well.

25

1 BY MR. LOWRY:

2 Q. Towards the end of your career, the
3 correctional officers held a vote of no confidence
4 on your tenure as a correctional secretary; did they
5 not?

6 A. From what I understand, they did, yeah.

7 Q. And the vote --

8 MR. BECK: Objection, Your Honor. Outside
9 the scope.

10 THE COURT: Overruled.

11 MR. BECK: Relevance.

12 THE COURT: Overruled.

13 BY MR. LOWRY:

14 Q. And the vote ended up to be 225 voting
15 that they had no confidence in you and only eight
16 officers voted that they had confidence in you. Do
17 you recall that?

18 A. I don't recall numbers.

19 Q. Do even recall getting a vote of no
20 confidence from the COs?

21 A. I recall there is some ambiguity. But it
22 doesn't matter -- and the truth of the matter is
23 that it hurts and stings. So, yeah, I remember that
24 going on.

25 Q. And that happened right as you left the

1 department?

2 A. Not right as I left, but before I left,
3 yes, sir.

4 Q. Now, did you approach the Lucky 8
5 Productions for the television series, or how did
6 you come together?

7 A. I didn't approach. I believe they
8 originally reached out to the department, and then
9 it came to my attention.

10 Q. And it's fair to say that you played a
11 fairly prominent role in the television series?

12 A. As a Secretary I did have a role in it,
13 yes, sir.

14 Q. And part of that television series, they
15 got access to the entire facility?

16 A. To the most part, yes, sir.

17 Q. And they were filming everything that
18 happens inside the Corrections Department?

19 A. For the most part.

20 Q. And that series lasted through -- the
21 filming took place, what, the summer and the fall of
22 2015?

23 A. That may be right, sir. Again, my dates
24 are off. But it lasted through two seasons.

25 Q. And those seasons were filmed in 2015;

1 correct?

2 A. I think so.

3 Q. And the series -- well, you had many
4 conversations with the producers of that series,
5 didn't you?

6 A. I had conversations with them. If you
7 could clarify "many." I mean, I don't know. I
8 mean, I had conversations with them, no doubt.

9 Q. Well, you spoke to them more than once?

10 A. Oh, absolutely, yes, sir.

11 Q. More than half a dozen times?

12 A. Yeah, maybe -- maybe half a dozen.

13 Q. And they had you review the episodes
14 before they would be published or aired on
15 television?

16 A. We got to see the rough cuts on what would
17 be aired.

18 Q. And you got editorial comment on what
19 would or wouldn't be played on television?

20 A. We stayed away from too much editorial
21 comment. It wouldn't be genuine, otherwise. But we
22 certainly got to see what was going to be put
23 together.

24 Q. Well, do you recall recommending to the
25 producers of the series that not only you, but the

1 folks at this table -- Mr. Acee and Ms. Maria
2 Armijo -- should view the episode at the end of the
3 series?

4 MR. BECK: Objection, Your Honor, hearsay.

5 THE COURT: This is his statement.
6 Overruled.

7 A. I want to make sure I'm understanding you,
8 sir. Could you repeat that?

9 BY MR. LOWRY:

10 Q. Sure. Do you recall speaking or having
11 any kind of communication with Maria Armijo or Agent
12 Acee about the final episode of the series?

13 A. I don't know that I recall having any
14 conversations about the final episodes. I do
15 remember having general conversation that because
16 that had happened in the prison system, that was
17 going to be in those episodes. But I don't remember
18 details on that or having a detailed conversation.

19 Q. Did you recommend to the producers of the
20 series that they should have the footage reviewed by
21 Maria Armijo and Special Agent Acee?

22 A. I don't remember specifically, but when
23 you ask the question, I certainly would have wanted
24 that. So because I don't remember, I hesitate to
25 say whether I did or not.

1 MR. LOWRY: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. LOWRY:

4 Q. Do you recognize this document?

5 A. Yes, sir. It appears to be an email.

6 Q. It's an email from you, isn't it?

7 A. Yes, sir.

8 Q. And it's an email to Alex Tomlin, who was
9 then Alex Sanchez, because she got married; correct?

10 A. Right.

11 Q. And it's fair to say that Alex Sanchez, in
12 her position, did a lot of the interfacing between
13 the production company and the Department of
14 Corrections to handle the series?

15 A. That's fair to say.

16 Q. And she would report to you?

17 A. Yes, sir.

18 Q. And so as communications came in from
19 Lucky 8, she would keep you posted on what was going
20 on?

21 A. For the most part.

22 Q. And in this particular email we've marked
23 as Defendants' Exhibit EK -- you wrote this email?

24 A. I think so.

25 Q. And in the body of this email, you

1 recommend to her to have this episode reviewed by
2 Bryan Acee and Maria Armijo, didn't you?

3 A. Yeah.

4 Q. And like any television series, you have a
5 season that you show it on the -- to the public;
6 correct?

7 A. They do, right, sir.

8 Q. And the producers of this series picked
9 the arrests in this case to be the season finale for
10 season two, didn't they?

11 A. Probably. I don't know. If you say so.
12 I believe. I don't remember if it was the finale.
13 But I know it was included in that season.

14 Q. Do you recall that that's what you were
15 talking about, to have that reviewed by the folks at
16 counsel table here for the United States Government?

17 A. Judging by the email, sir, I was concerned
18 to make sure that whatever was going to be aired,
19 that the prosecution understood that, and we didn't
20 want to negatively impact the work that they were
21 doing in this.

22 Q. And did you agree with your subordinates
23 that excising comments out that were unflattering to
24 the officers was a good idea?

25 A. Let me read this some more just to make

1 sure. But I don't remember agreeing to excise
2 comments that were unflattering to the officers.
3 There was a lot of comments unflattering to those
4 officers. May I read it again?

5 Q. Sure.

6 A. There is nothing here in the email that --
7 let me read above -- that might --

8 MR. BECK: Your Honor, may we approach?

9 THE COURT: Why don't we do this: Why
10 don't we go ahead maybe and have our lunch break at
11 this point.

12 All right. We'll see you in about an
13 hour. All rise.

14 (The jury left the courtroom.)

15 THE COURT: All right. What's the issue?

16 MR. LOWRY: Your Honor, I wanted to talk
17 to my colleagues, because I'm not trying to solicit
18 this actual comment, but the question was general.
19 Did he remember excising information from episodes
20 of the television series?

21 THE COURT: Okay. If we leave it there,
22 is that all right?

23 MR. BECK: That's fine.

24 THE COURT: All right. We'll leave it
25 there after lunch then.

1 All right. See y'all in about an hour.

2 (The Court stood in recess.)

3 THE COURT: Ms. Bhalla, you had something
4 to squeeze in before we bring in the jurors?

5 MS. BHALLA: Thank you, Your Honor. Just
6 continuing with the Giglio issue I brought up
7 earlier. I did check with Mr. Beck about whether or
8 not that letter had been previously disclosed. It
9 has not been previously disclosed. And again, Your
10 Honor, this is a letter with Giglio material that,
11 at this point, is going on three years old.

12 For Mr. Herrera, I think we're in a unique
13 position. I'm one of the newer attorneys on this
14 case. Mr. Maynard and I have been trying to catch
15 up on two years' worth of the discovery. And we're
16 still trying to process new discovery that's being
17 produced, Giglio discovery, despite multiple orders
18 of the Court to have it produced. I looked over
19 briefly all of the requests for discovery that have
20 been made. And I count at least 11 in the last year
21 alone from the defense.

22 In addition, Your Honor, I don't know if
23 you noticed earlier an entire cart full of redacted
24 transcripts was rolled into the courtroom this
25 morning. So, in addition to trying to process the

1 new disclosures which were made, I believe,
2 Monday -- and there were some made after that -- we
3 now have to spend time trying to go through redacted
4 transcripts.

5 So I think that's the prejudice, Your
6 Honor. It's impossible for us to be prepared.

7 THE COURT: Well, I've got a set of
8 transcripts, too. And so we're scrambling to take a
9 look at them. Along those lines, I'll hear what the
10 Government has to say about the letter, but on those
11 transcripts, I probably am going to -- the
12 defendants are going to have to look at them and see
13 if they're satisfied with the redactions. If you're
14 not, bring them up with Mr. Beck. And then, if
15 there is a dispute, bring that to my attention as
16 soon as possible so I can start looking at them and
17 ruling on them.

18 But I think I probably ought to give y'all
19 a moment. We looked at them to figure out what they
20 were, and stuff like that. But I think I need to
21 probably rely on y'all to take a look at them and
22 tell me if there is a problem, or you're satisfied
23 with them. And if not, tell me what -- talk to Mr.
24 Beck first. If you can't work it out, then I'll
25 have to start making rulings on it.

1 MS. BHALLA: I appreciate that, Your
2 Honor. I would just renew or request to strike
3 Billy Cordova's testimony in this matter.

4 THE COURT: Let me find out from Mr. Beck,
5 what is this letter?

6 MR. BECK: This letter was part of a
7 larger file. And we just received the letter now.
8 It will be disclosed in a legible copy. It's not
9 anywhere near as interesting as the following pages
10 in the packet make it seem.

11 Over the course of the last couple
12 hearings, as probably the Court and everyone else
13 will recall, we had issues with Corrections folks
14 showing up with stuff we hadn't seen. So we had a
15 conference call with Corrections, and we said, "You
16 all need to get to the bottom of the barrel on all
17 this stuff." We received that document just last
18 week, or the week before, and disclosed it.

19 THE COURT: All right. I probably have
20 other questions on it, but let's go ahead and bring
21 in the jury.

22 (The jury entered the courtroom.)

23 THE COURT: All right, everyone be seated.

24 All right. Mr. Marcantel, I'll remind you
25 you're still under oath.

1 Mr. Lowry, if you wish to continue your
2 cross-examination of Mr. Marcantel, you may do so at
3 this time.

4 MR. LOWRY: Thank you, Your Honor.

5 THE COURT: Mr. Lowry.

6 BY MR. LOWRY:

7 Q. Mr. Marcantel, I provided you another copy
8 of the email. So you said you recognize this email?

9 A. I think so, sir. I've written a lot of
10 emails, but I assume it's mine.

11 MR. LOWRY: Your Honor, at this point I'd
12 move for admission of Defendant's EK.

13 THE COURT: Any objection, Mr. Beck?

14 MR. BECK: No objection, Your Honor.

15 THE COURT: All right. Defendants'
16 Exhibit EK -- anybody else have any objection? Not
17 hearing any, Defendants' Exhibit EK will be admitted
18 into evidence.

19 (Defendants' Exhibit EK admitted.)

20 BY MR. LOWRY:

21 Q. So in your email you had asked for the
22 episode -- this particular episode of the series to
23 be reviewed by Bryan Acee?

24 A. Yes, sir, in the email, that's correct.

25 Q. And you see him today in the courtroom?

1 A. Yes, sir.

2 Q. And where is he?

3 A. Sitting at the end of the prosecution's
4 table.

5 Q. And how many times over the course of this
6 investigation had you spoken to Mr. Acee?

7 A. I've spoken to Mr. Acee several times over
8 the course of the investigation.

9 Q. And define several for me.

10 A. 15.

11 Q. And what about Ms. Armijo?

12 A. Five, maybe. I'm doing my best. I don't
13 remember exactly, sir.

14 Q. That's fine. I just -- I have no idea,
15 so --

16 A. Yes.

17 Q. So was this -- was this a commonplace
18 occurrence that they would work with you on editing
19 the series?

20 A. Typically, sir, no. We had what I thought
21 to be the right thing to do to try to tell the story
22 of these corrections officers going, but at the same
23 time, I would very much advocate for not affecting
24 this trial. And so it's not commonplace. But I
25 certainly -- like I said before, before you showed

1 me the email, I didn't remember it. But even in the
2 absence of the email, I would have believed that was
3 the right thing to do.

4 Q. In terms of -- well, effects -- let's talk
5 about -- you've grown up with television in your
6 lifetime?

7 A. Is that a question?

8 Q. Yes, it is.

9 A. Yes, sir.

10 Q. And you're familiar with the end of the
11 season where you see all the commercials, the
12 cliffhanger, you think of Dallas, "Who shot JR?"

13 A. Yes, sir.

14 Q. A lot of suspense building for that
15 particular episode; right?

16 A. I think they call it trailers. I think I
17 understand what you're saying.

18 Q. And that's because they want to carry over
19 their audience to the next season; correct?

20 A. I would assume so. I'm not in the
21 business, but that sounds reasonable.

22 Q. But this particular -- there was -- the
23 final season finale for the second season was the
24 arrests made in this case by --

25 MR. BECK: Objection, Your Honor,

1 foundation.

2 THE COURT: If he knows, he can testify.

3 Overruled.

4 A. I don't remember that it was the last -- I
5 do remember it was an episode. If you said it was
6 the last, I wouldn't have any reason to disagree
7 with you.

8 BY MR. LOWRY:

9 Q. And that would be the cliffhanger episode
10 related to this particular series?

11 A. I don't -- I think what your question is,
12 if I could clarify it, the last episode of the
13 series was the arrests; is that your question?

14 Q. Well, if you assume that it is -- I mean,
15 that's sort of the traditional cliffhanger moment
16 for that particular series.

17 A. So the question would be that would be
18 sort of a trailer for another series; is that --

19 Q. Right.

20 A. Oh. There wasn't going to be another
21 series.

22 Q. So are you saying that they didn't film a
23 season three?

24 A. I don't remember them filming -- they
25 filmed a documentary on our -- what we were trying

1 to do to improve our reduced recidivism on women.
2 And I think it was a two-hour special that they
3 filmed. But there wasn't another series. It was
4 two seasons.

5 Q. Now, as part of this A&E series, you gave
6 them complete access to everything, including the
7 security video, all aspects of the facility?

8 A. Relatively complete. Ms. Sanchez, as you
9 pointed out earlier, was the lead on that. But they
10 had access, they had more access than normal into
11 our prison system, yes, sir.

12 Q. And that included the security
13 surveillance video that's in all the pods?

14 A. That I don't know how much access they had
15 real-time on that. I don't know the answer to that.
16 But they had some access to it at some point through
17 their work with Ms. Sanchez, if it wasn't real-time.

18 MR. LOWRY: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. LOWRY:

21 Q. Mr. Marcantel, do you recognize that
22 document?

23 A. Yeah, I think it's a -- an agreement for
24 them coming in.

25 Q. And at the top of that do you see that

1 that agreement provided them access to all closed
2 circuit?

3 A. Yes, sir, as I pointed out, I know they
4 had access. And whether it was coordinated through
5 Ms. Sanchez or whether it was real-time was my
6 point. I don't know how that worked.

7 Q. So does that refresh your recollection as
8 to whether the production company had access to all
9 the security videos throughout the institution that
10 they had access to?

11 A. As I pointed out, they had access to that.
12 So it would help refresh, but I knew that. What I
13 don't know is the process of how. Was it real-time?
14 Was it something that they requested and Ms. Sanchez
15 got? I just don't know the answer to that.

16 Q. Speaking of Ms. Sanchez, she left the
17 employment of the Department of Corrections and went
18 to work for Lucky 8, didn't she?

19 A. At one point she did, yes, sir.

20 Q. And her employment there was short-lived
21 and she came back to the department.

22 MR. BECK: Your Honor, objection,
23 relevance.

24 THE COURT: Overruled.

25 A. I don't know how -- I don't know if I'd

1 frame it "short lived." I think it spanned the
2 course of whatever contract she had, and she came
3 back to the Department, yes, sir.

4 BY MR. LOWRY:

5 Q. And when she came back to your employ, one
6 of her duties was to monitor the revenues that the
7 series would generate?

8 A. Under her position there as Deputy
9 Secretary of Administration, that was the business
10 side of the house.

11 Q. Right?

12 A. Right.

13 Q. So she would keep track of the revenues
14 coming in or going out, the expenses, how much Lucky
15 8 owed the Department of Corrections?

16 A. As one of many things, I would assume,
17 yes, sir.

18 Q. Now, are you aware of the Auditor
19 General's report that assessed the Department's
20 ability to manage those contracts?

21 A. Not specifically, no. If you could give
22 me some more detail.

23 Q. Well, were you aware that the state
24 auditor in 2016 issued a report finding material
25 deficiencies with the Department of Corrections and

1 its ability to collect money from the Lucky 8
2 Production Company?

3 A. I'm not -- I'm not familiar with the
4 details, but I wouldn't dispute that. We -- we
5 routinely had audits that showed us areas that we
6 needed to improve on. So I'm not disputing it. And
7 I think that I actually at some level remember
8 remotely something like that, I just don't remember
9 all the details on it.

10 Q. Well, did you read the auditor's report at
11 all?

12 A. I don't remember if that auditor's report
13 came in about the time that I retired, I don't
14 recall it, but I don't recall reading the auditor's
15 report, no, sir.

16 Q. And did you ever become familiar with the
17 contents of the auditor's report?

18 A. Like I said, right now sitting here, I
19 don't remember that particular one. Every year that
20 I was actively employed we did an exit interview on
21 the auditor's findings, and we always went over, in
22 a meeting, those sorts of things, but I don't
23 remember that on this particular occasion.

24 Q. Did anybody ever explain to you that the
25 auditor found it was a conflict of interest for

1 Alex, then Sanchez, to manage those contracts?

2 A. I don't remember anyone explaining that to
3 me, no, sir.

4 Q. Did you remember the news reports that
5 came out about the audit?

6 A. I think that's what's jarring my memory.
7 I do think that I remember something about that
8 topic. But that's about it, and it may have been
9 the news that came out on it.

10 Q. One last question on the Lucky 8
11 Production Company, Mr. Marcantel. Were you aware
12 that the production company called you the Johnny
13 Cash of Corrections?

14 A. No.

15 Q. That's not something they would banter
16 around over lunch?

17 A. I think they would need to get out more if
18 they're calling me Johnny Cash.

19 Q. Did they ever ask you to dress in black?

20 A. I don't remember them telling me to dress
21 in black. I do remember one occasion that I had
22 some filming to do that they wanted me to dress in
23 the same thing that I had before, but I don't
24 remember if that was black, or gray, or what.

25 Q. You spoke earlier about your work with

1 administrative segregation, and I think I got this
2 right, that you said what -- what now they call
3 administrative segregation, the predatory management
4 unit, I think?

5 A. I didn't speak about that earlier at all
6 no, sir.

7 Q. But you did talk about administrative
8 segregation?

9 A. Oh, yes, sir.

10 Q. And that is the portion of Level 6, the
11 most secure portion of the prison facilities?

12 A. It's the most restrictive housing, right.

13 Q. And I'm not -- I'm going to try to
14 characterize what you said, but you said you should
15 be placed there by conduct, but not by label?

16 A. I believe that.

17 Q. So if you're involuntary -- if your
18 placement there is involuntary, and you've really
19 done nothing to deserve placement there, then how do
20 you justify holding somebody there for years?

21 A. That's where we needed to turn away from
22 just -- if you're asking the question based on if
23 you were placed in there on a label only, then
24 that's what we were trying to turn away from.

25 Q. Now, you're aware of the American

1 Correctional Association, maybe the standards for
2 Corrections Departments across the United States?

3 A. Yes, sir.

4 Q. And you're aware that ACA frowns upon
5 group punishment?

6 A. Yes, sir.

7 Q. You can't punish inmate Z for something
8 inmate A did?

9 A. I'm not sure that ACA would tell you that
10 punishment on group-driven crimes in prison is
11 wrong. I think what -- where they try to stray away
12 from is that restrictive housing, placing people in
13 the most restrictive environments based on -- as a
14 whole of a group is something that should be
15 avoided.

16 Q. But there are regulations in ACA standards
17 against group punishment?

18 A. I think it relates -- if my memory serves
19 me, I think it relates -- more so to the use of
20 segregation. If you have that, and can refresh my
21 memory -- but what I remember is that there are some
22 forms in terms of privileges that can be taken and
23 whatnot from a group standard when group is -- when
24 violence or something has been driven by a group.
25 That is seen as some of the more recent and relevant

1 ways to address gang violence in prisons.

2 MR. LOWRY: May I have a moment, Your
3 Honor?

4 THE COURT: You may.

5 MR. LOWRY: No more questions, Your Honor.

6 THE COURT: Thank you, Mr. Lowry.

7 Mr. Jewkes, are you going to go next?

8 MR. JEWKES: Yes, Your Honor.

9 THE COURT: Mr. Jewkes.

10 MR. JEWKES: Thank you. Your Honor, may
11 it please the Court?

12 THE COURT: Mr. Jewkes.

13 CROSS-EXAMINATION

14 BY MR. JEWKES:

15 Q. Good afternoon, Mr. Marcantel.

16 A. Good afternoon, sir.

17 Q. On cross-examination -- or direct
18 examination -- excuse me -- Mr. Beck asked you about
19 some initiatives you had to try to improve the
20 prison system. And if I understood you correctly,
21 you talked about one conversation or one initiative
22 with regard to family visits. But that fell
23 through. And if I understood you correctly, I think
24 you said because drugs were brought in. I wasn't
25 sure what the connection was there. If you could

1 explain that, please.

2 A. I think I understand what incident and
3 what part of my testimony on direct you're asking,
4 sir. It is regarding the drugs that had come in on
5 one occasion. And it appeared through the Security
6 Threat information, it had come in through the
7 family visit. Family visits were new to this group
8 of SNM members. They were privileges that we were
9 trying to put out there to sort of move them in a
10 different direction.

11 When the drugs came in, we didn't change
12 that. They didn't go back to segregation. But the
13 discussion that you're referring to that I had with
14 them was to make it clear that if that did happen
15 again, there would be changes.

16 Q. All right. Mr. Marcantel, was it just one
17 incident of drugs coming in or a number of
18 incidents?

19 A. As I recall, it was one. It was more
20 drugs than one person could consume, and so there
21 was -- you know, there was an assumption that that
22 was going to be unhealthy. I don't remember it to
23 be several, I remember it to be one.

24 Q. What type of drug?

25 A. I don't remember. I think it was

1 Suboxone, sir. I don't remember the specific drugs.

2 Q. Are you familiar with the drug Suboxone?

3 A. Fairly, a little.

4 Q. Could you explain to the jury what
5 Suboxone was, the effect it had, based on your
6 knowledge of it? Not that you're a user, but based
7 on your educated knowledge of it.

8 A. I'm nor a user or expert in the area, but
9 I'll give you what I know.

10 Q. Yes, sir.

11 A. And that is, it is originally in its form
12 a therapeutic alternative to heroin. But it is used
13 based on its concealability to get into prisons as
14 an alternative to heroin. And so it's been quite
15 the epidemic for prisons that have higher rates of
16 heroin addiction, like ours, in this state. And so
17 it's a pervasive problem in New Mexico's prisons,
18 the smuggling of Suboxone in.

19 Q. So I take it there is a high incidence of
20 heroin use in the New Mexico prison?

21 A. Sir, I think there is a high incidence of
22 heroin use in our population. And that translates
23 itself to our population in the prison.

24 Q. And so Suboxone would go pretty much
25 hand-in-hand with the heroin situation; would you

1 agree?

2 A. Hand-in-hand in what regard?

3 Q. By that I mean it's a substitute for
4 heroin, and it's a much more concealable?

5 A. That's the assumption that I understand,
6 yes, sir.

7 Q. Easier to smuggle in?

8 A. That's what I understand.

9 Q. How do illegal drugs get into the
10 penitentiary system, Mr. Marcantel?

11 A. Various ways. I think the more prominent
12 ways are through staff, through family visits,
13 through mail correspondence -- hard mail
14 correspondence. Those are probably the greatest
15 current vulnerabilities in the prison system for
16 drugs to get in.

17 Q. Okay. So when we're talking about
18 smuggling narcotics into penal institutions -- you
19 stop me and correct me if I'm wrong -- we have drugs
20 coming in through family members, yes?

21 A. That's one source, potentially.

22 Q. Prison staff, yes?

23 A. Yes, sir.

24 Q. And it can come in by way of mail?

25 A. Yes, sir.

1 Q. Okay. Anyone under your employ ever done
2 a study to determine what percentage comes in by way
3 of corrupt staff, family members, or the mail --
4 U.S. mail?

5 A. Not that I'm aware of, no specific study
6 on sort of how that sorts out. I know that those
7 are very big vulnerabilities. And if your question
8 is regarding staff, yes, it is a huge problem in our
9 prison systems across the nation.

10 Q. Corruption.

11 A. Yes, sir.

12 Q. What do you do to stop it, Mr. Marcantel?

13 A. You do your best to educate them on how
14 they can become compromised. You do your best to
15 try to raise pay. You do your best to do all of
16 those sorts of things. You do your best to vet them
17 as best you can on the front end. But it's a very
18 complex and difficult set of circumstances for
19 prison management.

20 Q. What would you say was the most popular
21 drug to be smuggled in?

22 A. Again, not trying to suggest I'm an
23 expert, but at least from my experience it seemed
24 like Suboxone was probably the most prevalent drug
25 that was smuggled in.

1 Q. Because it was easily concealed?

2 A. That would be my assumption, it's easier
3 to get in.

4 Q. You have a background doing narcotics
5 work, do you not, in law enforcement?

6 A. Some, it's been quite a while back.

7 Q. Suboxone, what's it like? Not to take it,
8 but how do you -- what's it look like?

9 A. Let me qualify if you're pinning -- if
10 your question is pinning my answer to my experience
11 in law enforcement?

12 Q. Yes, sir.

13 A. I never had any experience with Suboxone
14 when I was in law enforcement, working narcotics.
15 That wasn't something that I had experience with.
16 My experience is limited to this role that I had as
17 Corrections Secretary, and from what I remember,
18 they're in small, sort of orange -- sorts of slips,
19 primarily, they may come in other forms, but that's
20 what I remember seeing.

21 Q. Do you remember those breath strips you
22 used to be able to buy at truck stops and drug
23 stores, whatever, you take one out, and it's very
24 thin, and you put it on your tongue and it melts and
25 it gives good breath?

1 A. I do remember it.

2 Q. Okay. Suboxone, it's kind of like that,
3 isn't it?

4 A. I think that's --

5 Q. Very sheer?

6 A. That's a great analogy you just gave, sir.

7 Q. And I assume with Suboxone, you put it on
8 the end of your tongue and let it melt?

9 A. I don't know.

10 Q. You don't know?

11 A. I don't know. I'm sure there is various
12 ways to ingest it, just like there is various ways
13 to ingest everything else, heroin and crack and all
14 those other drugs.

15 Q. And Suboxone, you believe probably is the
16 most popular drug right now because of the easy
17 ability to get it into the institution?

18 A. Based on experience, I believe that
19 Suboxone probably was the more prevalent drug. If
20 it were the more popular, I don't know, but at least
21 in terms of interdiction, it seemed to be the most
22 prevalent that I remember seeing in terms of
23 reports.

24 MR. JEWKES: Pass the witness.

25 THE COURT: Thank you, Mr. Jewkes.

1 Ms. Bhalla, are you going next?

2 MS. BHALLA: Yes, Your Honor, please.

3 THE COURT: Ms. Bhalla.

4 CROSS-EXAMINATION

5 BY MS. BHALLA:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. I just have a brief question. You talked
9 a little bit about the series that filmed with A&E,
10 I believe, in the prison; is that correct?

11 A. We did earlier, yes.

12 Q. And that was with Lucky 8; correct?

13 A. Correct.

14 Q. Did you sign an agreement with Lucky 8
15 that gave them access to the cameras within inside
16 PNM to use?

17 A. I think the exhibit that was passed
18 earlier by the gentleman, I think that was what
19 indicated that agreement.

20 Q. Do you need to take a look at it?

21 A. I would love to again if we're going to
22 talk about it.

23 MS. BHALLA: May I approach, Your Honor?

24 THE COURT: You may.

25 A. That would be the one, ma'am.

1 BY MS. BHALLA:

2 Q. And is your signature on that document?

3 A. It is.

4 Q. So you entered into that agreement with
5 Lucky 8?

6 A. The clearance agreement, yes, ma'am.

7 Q. Okay. And that allowed them to utilize
8 the cameras inside Southern New Mexico Correctional
9 Facility?

10 A. As I pointed out, it allowed them access
11 to camera footage. How that exactly happened, was
12 it real-time or was it through coordination with Ms.
13 Sanchez, I don't know the answer to that. But it
14 did allow them access to footage, yes.

15 Q. Okay. And it's not my question of whether
16 it was in real-time or whether it was after the
17 fact. What I'm asking you is Lucky 8, a production
18 company, had access to use the prison cameras that
19 were inside the blue pod, the yellow pod, and the
20 green pod; is that correct?

21 A. Again, they used footage from the cameras
22 in those pods. I want to make sure that I'm
23 clarifying in my answer that I don't know that to be
24 real-time, to sit and watch those cameras, or is it
25 to request from Ms. Sanchez footage that she would

1 then vet and give to them.

2 Q. And I understand that. But I'm trying to
3 make sure I understand. Lucky 8 was allowed to use
4 the video footage, whether it was live feed after
5 the -- or after the fact, or through a request or
6 not through a request within PNM. So -- or within
7 NMCD, I should say, I'm sorry. So my question is,
8 NMCD was using their cameras which Lucky 8 was going
9 to have access to that footage from NMCD cameras; is
10 that correct? That's a yes or no question.

11 A. I'm just trying to -- I guess in the
12 context that you're putting it, the best answer I
13 could give you is yes, in that context.

14 MS. BHALLA: Thank you. I have nothing
15 further, Your Honor.

16 THE COURT: Thank you, Ms. Bhalla.

17 Ms. Fox-Young, do you have any questions?

18 MS. FOX-YOUNG: I have no questions for
19 this witness, Your Honor.

20 THE COURT: Thank you, Ms. Fox-Young.

21 Mr. Beck?

22 MR. BECK: No redirect.

23 THE COURT: Mr. Marcantel, you may step
24 down.

25 Is there any reason that Mr. Marcantel

1 cannot be excused from the proceedings?

2 MR. LOWRY: Your Honor, can we approach
3 the bench?

4 THE COURT: You may.

5 (The following proceedings were held at
6 the bench.)

7 MR. LOWRY: Your Honor, technically I have
8 questions that didn't fall within the scope of
9 direct. I'd like to talk to him about that. And
10 it's just the pizza party, meeting with --

11 (The following proceedings were held in
12 open court.)

13 THE COURT: Mr. Marcantel, Mr. Marcantel,
14 stand right there.

15 (The following proceedings were held at
16 the bench.)

17 MR. LOWRY: And participating in the
18 investigation in terms of meeting with inmates after
19 they cooperated. I didn't really think that fell
20 within the scope of direct, and I didn't want to
21 have an objection to that. So we can do that now,
22 if I can take him as a hostile witness. I want to
23 avoid the problem Mr. Beck was raising earlier.

24 MR. BECK: I think that's fair, Your
25 Honor. I think -- given the way -- obviously, he

1 could call him on redirect -- given the way Your
2 Honor has ruled with the rule applying to Mr.
3 Marcantel, and given that he wants to sit in, I
4 think that's probably the way to proceed. I don't
5 know.

6 MR. LOWRY: It's going to be short.

7 MR. BECK: I don't think he's hostile.

8 THE COURT: Why don't we have him return
9 to the stand and explain it to the jury and just ask
10 some further questions.

11 MR. LOWRY: That's fine.

12 (The following proceedings were held in
13 open court.)

14 THE COURT: Mr. Marcantel, why don't you
15 return to the witness box. I'll remind you you're
16 still under oath. Mr. Lowry is going to ask you a
17 few more questions.

18 CONTINUED CROSS-EXAMINATION

19 BY MR. LOWRY:

20 Q. Pardon me. I didn't mean to hold you up.

21 A. That's all right.

22 Q. I just have a couple quick questions, Mr.
23 Marcantel. During the course of this investigation,
24 how many individuals who were working with the
25 United States Government and the prosecution of this

1 case who were inmates or former inmates did you talk
2 to?

3 A. Let me make sure I understand. So during
4 the course of the investigation, how many people
5 were cooperators --

6 Q. Sure. If you want to use that term?

7 A. -- with the prosecutor, did I talk to?
8 Hum. I don't know. Perhaps en masse I remember
9 visiting a pod of them at one point briefly. Maybe
10 there were six, maybe there were 10. I don't
11 remember how many.

12 Q. Six or 10 separate occasions, or --

13 A. No -- oh, no. I remember that one
14 occasion. I'm trying to think through, sir, if
15 there were any other occasions. I remember that
16 because I remember visiting the pod. That's the
17 only time right now I remember talking to any of
18 these folks that you're referring to.

19 Q. So there would be a single event where you
20 may have talked to six to 10?

21 A. And I talked to them as a crowd. I might
22 have said something on the side like, "Hi," or
23 something like that. But, yeah, that's what I
24 remember.

25 Q. Was that a pizza party?

1 A. No, no.

2 Q. Did you ever --

3 A. No.

4 Q. Well, did you ever attend an evening
5 social or a pizza party with those individuals?

6 A. I don't remember attending a pizza party
7 or an evening social with them.

8 MR. LOWRY: Okay. No further questions,
9 Your Honor.

10 THE COURT: Thank you, Mr. Lowry.

11 Mr. Beck, do you have any redirect?

12 MR. BECK: No, Your Honor.

13 THE COURT: All right. Can Mr. Marcantel
14 now be excused, Mr. Beck?

15 MR. BECK: He may, Your Honor.

16 THE COURT: Mr. Lowry? Any other
17 defendants have objection to him being excused? .

18 You're excused from the proceedings.

19 Thank you for your testimony.

20 All right. Does the Government have its
21 next witness or evidence?

22 MR. CASTELLANO: We do. Your Honor, I
23 believe counsel wants to approach before the next
24 witness.

25 THE COURT: All right.

1 (The following proceedings were held at
2 the bench.)

3 THE COURT: Who is the next witness?

4 MR. LOWRY: Jake Armijo.

5 MS. ARMIJO: He's one of the cooperating
6 defendants, Your Honor. He's charged in the 1613
7 case.

8 THE COURT: Okay.

9 MS. ARMIJO: Which I don't know what the
10 issue is, but we may want to address that here.

11 THE COURT: What's the issue, Mr.
12 Castellano?

13 MS. DUNCAN: This is my issue, Your Honor.
14 We got a letter from the Government on the 28th --

15 THE COURT: You got what?

16 MS. DUNCAN: A letter from the Government
17 on the 28th identifying additional James statements.
18 There are two statements that they're claiming fall
19 under James from Mr. Armijo, that we had not heard
20 about during the other hearings. We heard them the
21 first time on the 28th. So I'm asking the Court to
22 exclude them.

23 THE COURT: What is the nature of the
24 statements?

25 MR. CASTELLANO: One of them I can just

1 summarize it, it's at the bottom of that page and
2 the next page. For the record, I'm handing the
3 record, the disclosure letter.

4 THE COURT: You think it's on the second
5 page?

6 MR. CASTELLANO: Actually, the bottom of
7 the first page under Jake Armijo's name.

8 THE COURT: So these were statements that
9 Garcia made before the Marcantel hit was brought to
10 a conclusion?

11 MR. CASTELLANO: That's correct, Your
12 Honor. Probably a short time, maybe three weeks
13 before the takedown, Manuel Jacob Armijo was with
14 Chris Garcia. Chris Garcia told him that Mr. Baca
15 had him on a mission regarding Marcantel. He also
16 asked Mr. Armijo what he knew about Mandel Parker,
17 who ended up being another conspirator, who is
18 charged in the 1613 case with the Marcantel
19 conspiracy as well. And then the other statement --
20 there should be another statement there in which Mr.
21 Baca, through a person known to Mr. Armijo as ABG,
22 asks Armijo or tries to order him to murder Javier
23 Molina. This is probably in the 2011 timeframe, if
24 I remember correctly. Manuel Jacob Armijo refused
25 to murder -- to commit the murder because there was

1 no paperwork. He hadn't seen any paperwork.

2 THE COURT: And why the late disclosure of
3 at least two statements?

4 MR. CASTELLANO: We just overlooked them.
5 When we went through all of the James statements
6 that we -- there were so many of them that we missed
7 this one. And this was disclosed in the January 12
8 disclosures when the Jencks came out. But I
9 actually included it in the letter as well.

10 THE COURT: They were disclosed on January
11 20?

12 MR. CASTELLANO: January 12, there was a
13 disclosure.

14 THE COURT: The Jencks disclosure?

15 MR. CASTELLANO: The request came out in
16 the Jencks disclosures.

17 THE COURT: Would you agree with me that
18 both these are subject as to the co-conspirator
19 exception? There is no -- you're not arguing they
20 don't fall within the co-conspirator exception;
21 you're just arguing the late disclosure?

22 MS. DUNCAN: I think the Chris Garcia one,
23 I don't know, is in furtherance of the conspiracy.
24 It sounds like he's just asking about Mandel Lon
25 Parker. The second one about Molina, I think, is

1 perhaps a different conspiracy, if it exists at all.

2 Our primary objection, Your Honor, is the
3 late notice. And I'd also notice according to the
4 Government two witness there is group one were the
5 will calls, group two were the may calls, Manuel
6 Jake Armijo is on the may call. So although we knew
7 he's a possibility, he's being called on the second
8 day of trial. So he wasn't at the top of our radar
9 list because we thought that the may calls were kind
10 of backups to the will calls. So we learned he was
11 going to be a witness two days ago.

12 THE COURT: If you had got it at the James
13 hearing, would you be doing anything differently
14 today?

15 MS. DUNCAN: In terms of argument at the
16 James, we would have prepared very differently for
17 Mr. Armijo for sure.

18 MS. JACKS: Can I be heard?

19 THE COURT: Let me hear from Mr. Lowry
20 first.

21 MR. LOWRY: Thank you, Your Honor. Your
22 Honor, the one thing we'd have done to prepare
23 differently is that given the timing of this with
24 our particular entrapment defense, I think that the
25 one going to the Marcantel is more prejudicial,

1 substantially more prejudicial than probative,
2 because we would concede that once the -- you know,
3 there is a period of time in late November where Mr.
4 Baca is clearly recorded agreeing to this. But to
5 make it sound like it was months or years in the
6 making is just really fundamentally unfair.

7 I would point out after we had the
8 November hearing, that the Government went out when
9 we raised the issue, with the whole idea that the
10 shanks couldn't be crafted in time -- this is way
11 back in Albuquerque after we had the black curtain
12 hearing -- the United States went out and
13 immediately located five witnesses that said: No,
14 no, no, no, this conspiracy started way back when in
15 2011. Now, we didn't have the names of those
16 individuals at that time. It wasn't until October
17 when they disclosed the confidential human sources.
18 We only got one individual off of that list of 3 or
19 four or five, and that was Billy Cordova. And we
20 worked diligently to address that in our preparation
21 for this trial. But we had absolutely no idea that
22 Jake Armijo was involved in that. And we've had no
23 opportunity, given the avalanche of disclosures over
24 this week to investigate or prepare for this.

25 THE COURT: Does he have other statements

1 to make? Has he got other testimony to give that
2 was in the James statements?

3 MR. CASTELLANO: I don't think so. I
4 think what I provided were the --

5 THE COURT: These two statements, is there
6 any reason to call him?

7 MR. CASTELLANO: He's going to be called,
8 Your Honor. He's got evidence regarding Mr. Baca
9 and others. But at the same time, when we put on
10 the James statements, or at least the Court said,
11 let's go ahead and have a James hearing this week,
12 so we put on all the statements that we could,
13 according to the Court would consider us doing that,
14 and so when this came up, reviewing the evidence for
15 trial, we reinterviewed all the witnesses or the
16 cooperators for trial the last two weeks. And as we
17 interviewed them, the reason the defense has
18 additional Giglio disclosures is because we
19 disclosed those as well as a result of the
20 interviews. And so we gave them additional Giglio,
21 and then any other statements with him that included
22 James statements, we also disclosed those. So the
23 reason they know Billy Cordova used drugs a month
24 and a half ago is because we disclosed that to them
25 in the same set of disclosures.

1 THE COURT: What do you have to say, Ms.
2 Jacks?

3 MS. JACKS: I just want to talk about the
4 second statement, the one that's about the
5 conspiracy to murder Molina. And what I would
6 notice -- and I would object on behalf of Mr.
7 Sanchez -- but I think the same applies to Perez and
8 Herrera, is that this is 3 years prior to any
9 conspiracy in which they were allegedly involved.
10 And it certainly was inapplicable to them. It's not
11 in furtherance of any conspiracy that they were
12 members of. It's potentially a separate conspiracy
13 between different individuals to kill Molina. So I
14 don't think it comes in as to this conspiracy, and
15 in particular with Sanchez and Perez.

16 MR. LOWRY: And, Your Honor, if you recall
17 evidence -- and I think the Government may agree
18 their own witnesses would say that that conspiracy
19 failed because there was a disagreement, and the
20 paperwork -- alleged paperwork -- at that time was
21 destroyed. So that conspiracy had a beginning,
22 middle, and end, and is distinct and separate from
23 the one under indictment.

24 MR. CASTELLANO: The conspiracy never
25 ended. We had people entering or exiting the

1 conspiracy, or others not joining the conspiracy,
2 because they did not believe that Molina should be
3 murdered. It's an ongoing conspiracy. It's also
4 racketeering evidence.

5 THE COURT: Well, here's what I'm inclined
6 to do: This letter is pretty fresh -- Sunday. I'll
7 let you call Mr. Armijo, and you can put on the
8 testimony that you disclosed. I am a little bit
9 concerned about him bringing in the portions about
10 Marcantel without giving some opportunity to -- the
11 defendant to adjust to -- Mr. Baca to adjust to it.

12 I'm less concerned about the one as far as
13 the Molina group. The Government conspiracy to kill
14 Molina has been going on for a while. But I think I
15 want to allow you to do it. I'm not seeing much
16 prejudice to either side, if I give them a little
17 more time. So if you want to re-call him down the
18 road for these two statements, I'll allow it. But
19 not elicit this testimony today. Can I have a copy
20 of that letter when you have --

21 MR. CASTELLANO: Yes, we'll provide a
22 copy. And what time frame are we looking at for
23 the -- be prepared for additional statements?

24 THE COURT: What period of of time do you
25 need to think about these two statements?

1 MR. LOWRY: These two. Is he housed here?
2 I don't need to know, but I thought if he's in
3 Southern --

4 MR. CASTELLANO: Do you need a week?

5 MR. LOWRY: Yeah, a week. If we could
6 call him next week, Monday or Tuesday, the following
7 week, we can live with that.

8 THE COURT: Can you live with that?

9 MR. CASTELLANO: Yes.

10 THE COURT: All right. Let's do that.

11 (The following proceedings were held in
12 open court.)

13 THE COURT: All right. Are you Mr.
14 Armijo?

15 THE WITNESS: Yes.

16 THE COURT: If you'll come up and stand
17 next to the witness box on my right, your left, Ms.
18 Standridge, my courtroom deputy, will swear you in.

19 MANUEL ARMIJO,
20 after having been first duly sworn under oath,
21 was questioned, and testified as follows:

22 MS. STANDRIDGE: Please be seated. State
23 and spell your name for the record.

24 THE WITNESS: Manuel Armijo, M-A-N-U-E-L,
25 A-R-M-I-J-O.

1 THE COURT: Mr. Armijo. Mr. Castellano.

2 MR. CASTELLANO: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. CASTELLANO:

5 Q. Good afternoon, Mr. Armijo.

6 A. Good afternoon.

7 Q. Are you known by any other names?

8 A. Jake.

9 Q. Do people sometimes call you Big Jake?

10 A. Yes.

11 Q. I want to ask you if you've been charged
12 in relation to the SNM investigation.

13 A. Yes.

14 Q. And can you tell the members of the jury
15 whether you were charged with racketeering and
16 conspiracy?

17 A. Yes.

18 Q. Can you tell the members whether you've
19 pled guilty to those charges?

20 A. Yes.

21 Q. And related to those charges, have you
22 agreed to cooperate with the Government and to give
23 testimony to this jury?

24 A. Yes.

25 Q. Do you know what the SNM is?

1 A. Yes.

2 Q. What is it?

3 A. Sindicato de Nuevo Mexico.

4 Q. And what are they, or who are they?

5 A. At one time we were the largest prison
6 gang in New Mexico.

7 Q. And you said "we." Did you include
8 yourself as an SNM Gang member at one time?

9 A. Yes.

10 Q. Can you tell the members of the jury when
11 you joined the gang?

12 A. 1993.

13 Q. How is it that you became a member?

14 A. I was approached by a member of the SNM
15 and later on recruited.

16 Q. When you were approached by that member,
17 were you in prison or were you out of prison?

18 A. I was in prison.

19 Q. Why were you in prison, Mr. Armijo?

20 A. I believe I was there for -- I want to say
21 an assault charge.

22 Q. Before you were approached about joining
23 the SNM, were you a member of any other gangs?

24 A. Yes, I was from Barelás.

25 Q. And was Barelás also a gang?

1 A. Yes.

2 Q. Can you tell the members of the jury
3 whether that's a gang from the Barelás area of
4 Albuquerque?

5 A. Yes. It's from down in the Barelás area.

6 Q. What happened that caused someone to
7 approach you to see about joining the gang?

8 A. I had an attempt on my life by one of the
9 black inmates in the main facility.

10 Q. What happened to you?

11 A. They cut my throat.

12 Q. And what happened as a result of those
13 injuries? Where were you taken?

14 A. I was taken to the North, to the North
15 facility.

16 Q. And when you say "the North facility," is
17 that the North facility in Santa Fe?

18 A. Yes.

19 Q. And did you run into anybody you met while
20 you were in the infirmary?

21 A. No.

22 Q. After you were assaulted by the black
23 inmate, how is that it someone came to approach you
24 and asked you about the SNM?

25 A. One of the older guys from my gang, from

1 Barelas neighborhood, found out that it was me that
2 got moved on, and they were going to retaliate
3 against the blacks on my behalf.

4 Q. Who was the person who approached you?

5 A. Johnny Gallegos.

6 Q. Was he known by any other names?

7 A. Johnny Green Eyes.

8 Q. What did you do in response to his
9 question to you about joining the gang?

10 A. I told him I would think about it.

11 Q. And did you think about it?

12 A. I did.

13 Q. What decision did you make?

14 A. I decided that that's where I wanted to
15 be; that's where I wanted to belong to.

16 Q. So was there any kind of process you had
17 to go through in order to join the gang?

18 A. Yes.

19 Q. What was that process?

20 A. I had to move on an LC member.

21 Q. So you said a couple things there. You
22 said you had to move on somebody. What did that
23 mean?

24 A. I had to assault, stab, or kill an LC
25 member.

1 Q. And what does LC stand for?

2 A. Los Carnales. It's a rival prison gang.

3 Q. So like you said, they were another gang
4 in prison?

5 A. Yes.

6 Q. And at that point in time, what was the
7 relationship between the SNM and the LC?

8 A. There was no good terms there.

9 Q. So did you have the opportunity to move on
10 or assault that LC gang member?

11 A. No.

12 Q. What happened?

13 A. I ended up getting in an altercation with
14 the correction officer.

15 Q. And what happened as a result of that
16 altercation?

17 A. I ended up back at the North facility.

18 Q. So where were you, then, before you got
19 moved back to the North?

20 A. I was at the South in Santa Fe.

21 Q. What happened once you got back up to the
22 North?

23 A. I was asked what happened, and if I took
24 care of what I needed to take care of. I told them
25 no. I told them the reason. I told them what

1 happened.

2 Q. And was everybody okay with that, or what
3 came of it?

4 A. They were okay with it. They just said,
5 "You'll have time."

6 Q. Did you stay at the North, or did you move
7 anywhere actually from that facility?

8 A. I stayed at the North for a few months,
9 and then I was moved to Southern.

10 Q. The Southern facility near Las Cruces?

11 A. Yes.

12 Q. What happened once you got down there?

13 A. I was put into a pod with Angel Munoz.

14 Q. Who was Angel Munoz?

15 A. Angel Munoz was the leader of the SNM.

16 Q. Did you eventually meet him?

17 A. I met Angel at the North facility before
18 we got to Las Cruces.

19 Q. How did you guys first get along when you
20 met?

21 A. We got along good.

22 Q. Did he have any issues with you joining
23 the gang at first?

24 A. Yes, he did.

25 Q. What was the problem, if any?

1 A. He had said all the books were closed and
2 that they would be letting no SNM members in.

3 Q. So like you said, when the books were
4 closed, they weren't signing up new members?

5 A. Yeah. They weren't bringing nobody in.

6 Q. Did that change?

7 A. Yes.

8 Q. When did that change?

9 A. Mostly there in Cruces, me and Angel got a
10 little closer. It was my responsibility to watch
11 over him and take care of him.

12 Q. And how is it that you found yourself in
13 that position? Were you pretty good at fighting?

14 A. I've always been a good fighter, and I'm
15 big for my size.

16 Q. So what types of things would you do to
17 protect Angel Munoz?

18 A. Just make sure nobody disrespect him, came
19 near him, assaulted him, or anything of that sort.

20 Q. Now, what kind of -- how big is respect in
21 the prison system?

22 A. It's very big.

23 Q. So if somebody were to disrespect Angel
24 Munoz, what would have been your responsibility?

25 A. I would have assaulted him on the spot.

1 Q. At that point in time, when you were his
2 bodyguard, were you officially a member or were you
3 still kind of a prospect, seeking membership?

4 A. More or less a prospect.

5 Q. What else did you do for Angel Munoz?

6 A. Collected drugs, money.

7 Q. And was that within the prison system?

8 A. Yes.

9 Q. What type of drugs?

10 A. Heroin, marijuana.

11 Q. And at that point in time, who were you
12 collecting from? Were you collecting from SNM
13 members or other inmates? Who was it?

14 A. Other inmates and also SNM members.

15 Q. So is the leader of the SNM at that point,
16 or a leader -- were members expected to pay taxes to
17 Angel, or how did that work?

18 A. Well, out of the respect, it was from SNM
19 Gang members mostly, were to kick down a percentage
20 of whatever they got to him.

21 Q. So as you said, if they had something,
22 were they expected, then, to share it with Angel
23 Munoz?

24 A. Yes.

25 Q. Was drug distribution common in the prison

1 during that time?

2 A. Yeah, very big.

3 Q. And how big, at that point, was the SNM
4 and the drug trade in the prison?

5 A. We're pretty big.

6 Q. So about what time frame are we? You
7 first entered in 1993? Is it still the 1993 time
8 period, or a little bit later?

9 A. Oh, '94, '95.

10 Q. At what point were you recognized as an
11 official SNM Gang member?

12 A. I'd say about '95, '96.

13 Q. Did you have to do anything to be
14 recognized at that point?

15 A. Yes.

16 Q. What did you have to do?

17 A. I assaulted a couple of LCs from a rival
18 gang.

19 Q. How did you assault them?

20 A. I stabbed them.

21 Q. With what?

22 A. With a knife.

23 Q. Now, when you say a knife, is it like a
24 kitchen knife, or is it another type of knife?

25 A. It was a Bowie knife.

1 Q. And was that in prison?

2 A. No, it was in the streets.

3 Q. Let me ask you that, then. At one point
4 you're in prison with Angel Munoz. Then at some
5 point, since you're talking about the streets, did
6 you get out of prison?

7 A. Yes.

8 Q. About when was that?

9 A. '96.

10 Q. All right. I want to talk to you about
11 each of those assaults, then. What can you tell us
12 about the first assault?

13 A. I was at a party, and there was a guy
14 there bragging that he was from the LC. He didn't
15 know I was an SNM Gang member. And I lured him
16 outside and I ended up stabbing him.

17 Q. Did anyone order you to stab him?

18 A. No.

19 Q. Why would you stab a rival gang member,
20 even on the streets?

21 A. It was like a policy to hit on sight any
22 rival gang members.

23 Q. So even on the streets.

24 A. Yes.

25 Q. And was that expected of you because you

1 were a member of the SNM?

2 A. Yes.

3 Q. Please tell us about the other assault.

4 A. The other assault was -- used to be a
5 friend of mine. We grew up together. We're both
6 from the same gang, in the street, from Barelás. He
7 ended up becoming an LC. And I seen him in the
8 streets, and I ended up stabbing him also.

9 Q. Just so the jury understands, you told
10 them you kind of grew up with him and you were
11 friends. But did that matter if you guys are from
12 rival gangs at that time?

13 A. No.

14 Q. After these two assaults, did anyone
15 officially recognize you as an SNM Gang member?

16 A. Yes.

17 Q. Who was that?

18 A. Angel Munoz, Johnny Green Eyes, and Marty
19 Barros.

20 Q. Now, you mentioned three names to us. At
21 that point, were there any -- was there a certain
22 number of people who had to basically raise their
23 hand for you, or approve your membership?

24 A. Yes, there has to be three.

25 Q. All right. Now, at that point, around the

1 1996 timeframe, did you ever get arrested for either
2 of these assaults on the LC gang members?

3 A. No.

4 Q. Were you ever charged for that conduct?

5 A. No.

6 Q. Now, at some point in time did Angel Munoz
7 also get out of prison?

8 A. Yes.

9 Q. About when was that; do you remember?

10 A. I don't actually remember.

11 Q. Was it before or after these assaults?

12 A. It was after.

13 Q. And can you tell the members of the jury
14 whether -- if you guys were both out on the
15 streets -- anyone disrespected Angel Munoz?

16 A. Yes. We went to -- I went to a party with
17 him in Santa Fe, to his wife's family's party. A
18 guy became mouthing off to him. I lured him around
19 the back of the house, and I ended up stabbing him.

20 Q. And that was over disrespect?

21 A. Yes.

22 Q. Was that expected of you because of your
23 membership in the SNM?

24 A. Yes.

25 Q. Did you ever hear of a person named

1 Chaparro or Maldonado?

2 A. Yes.

3 Q. Who is that person?

4 A. He's also a member of the SNM.

5 Q. Has he always been a member of the SNM, as
6 far as you know?

7 A. Yes.

8 Q. And did he have any involvement with a
9 group called the All Stars?

10 A. Yes.

11 Q. What was his involvement with that group?

12 A. He was one of the founders of it.

13 Q. And do you remember approximately when
14 that happened?

15 A. No.

16 Q. So who were the All Stars?

17 A. They were what we would call at the time
18 rejects from the SNM. They were people that had
19 been moved on; in other words, attacked, stabbed.
20 They went off and started their own little clique.

21 Q. Now, when they were attacked or stabbed,
22 were they attacked and stabbed by SNM members or
23 other people?

24 A. By SNM members.

25 Q. All right. Why would the SNM assault some

1 of their own members?

2 A. If they were no good, if they had
3 paperwork on them, child molesters.

4 Q. Now, you mentioned the term "paperwork."
5 What are you referring to?

6 A. If they were rats.

7 Q. Now when you joined the S, did anyone
8 explain any rules to you?

9 A. Yes.

10 Q. What were those rules?

11 A. There are so many of them. There's just
12 rules to live by. Just like people live by the
13 rules of life, we have our own rules to live by.

14 Q. Let's begin with, like you said, rats or
15 snitching. What was the rule about that?

16 A. That was a big no.

17 Q. What about sex offenders?

18 A. That was definitely no.

19 Q. What was the SNM stance on homosexual
20 behavior?

21 A. It wasn't tolerated.

22 Q. Would you consider the SNM a prison gang?

23 A. Yes.

24 Q. When people get out of prison, do some of
25 those people still operate as SNM Gang members?

1 A. Yes.

2 Q. Can an SNM -- or can a person become an
3 SNM Gang member on the streets, even when they're
4 not in prison?

5 A. At that time, that didn't happen. But
6 I've seen it happen.

7 Q. All right. Let's talk about that, because
8 you said at that time, then you've seen it happen.
9 So at some point in time, did the rules change a
10 little bit?

11 A. I think they have. I think they did. A
12 lot of things got more lenient.

13 Q. And lenient in what way?

14 A. After a lot of the older guys started
15 dying off, people just started, I guess, making up
16 their own rules, their own bylaws.

17 Q. Were they considered -- could they still
18 be considered rules of the SNM Gang?

19 A. Yes.

20 Q. What about taking orders from other
21 people? If someone gave you an order to do
22 something, what did you have to do?

23 A. You had to do it.

24 Q. What if you disagreed with it?

25 A. I guess it would depend on the situation.

1 Q. What would be some of the examples? Let's
2 say someone ordered you to stab an LC gang member
3 and you refused to do it.

4 A. That would be a mandatory violation.

5 Q. What would be the consequences or possible
6 consequences under those circumstances?

7 A. I myself would get stabbed or killed.

8 Q. I'm going to ask you if you knew somebody
9 named Chris Garcia.

10 A. Yes.

11 Q. How did you know him?

12 A. I met him in prison.

13 Q. What do you know about him in terms of
14 dealing drugs?

15 A. I knew he had access to a lot of drugs.

16 Q. Did you ever obtain drugs from him?

17 A. Yes.

18 Q. Do you know whether or not he supplied
19 other SNM Gang members with drugs?

20 A. Yes.

21 Q. What types of drugs would you get from
22 Mr. Garcia?

23 A. Heroin.

24 Q. And were you yourself a heroin user?

25 A. Yes.

1 Q. What types of drugs have you used in your
2 life?

3 A. Methamphetamines, coke, and heroin.

4 Q. I'm going to ask you about your
5 methamphetamine use. When was it that you used
6 methamphetamine, or what time period?

7 A. I would say about '99, 2000.

8 Q. How long were you using methamphetamine?

9 A. I'd say for about six, seven months.

10 Q. What happened after that timeframe, the
11 six or seven months?

12 A. I ended up going back to prison.

13 Q. Did you ever seek treatment for the
14 methamphetamine use?

15 A. Yes.

16 Q. What did you do?

17 A. I started doing an outpatient treatment
18 program.

19 Q. And were you able to kick that habit?

20 A. Yes.

21 Q. When was the last time you used
22 methamphetamine?

23 A. 2012.

24 Q. What kind of effect did that drug have on
25 you?

1 A. Not good.

2 Q. Did you consider it a pretty nasty drug?

3 A. Yeah.

4 Q. Now, in the prison system, you talked
5 about collecting drugs from other people. Were you
6 also using in prison?

7 A. Yes.

8 Q. What was your drug of choice in prison?

9 A. Heroin.

10 Q. How would you use it?

11 A. Intravenously.

12 Q. Were needles common in prison?

13 A. Yes.

14 Q. Were they regular needles, or could you
15 also convert things into needles?

16 A. I've seen people convert things, but
17 they're usually from the infirmary.

18 Q. Has it been your experience that inmates
19 also share needles?

20 A. Yes.

21 Q. What kind of health problems has that
22 caused in the prison?

23 A. Hepatitis C.

24 Q. Does that cause the spread of hepatitis C
25 within the prison system?

1 A. Yes.

2 Q. What about tattooing in prison?

3 A. There is plenty of it going on.

4 Q. Now, is it against the rules to get a
5 tattoo in prison?

6 A. No.

7 Q. And how do you give someone a tattoo in
8 prison?

9 A. Back in the day, they used -- it was just
10 like living in apartments. Everybody had their own
11 room. The guard came around every once in a great
12 while to make sure everybody was alive, and that was
13 it.

14 Q. And so could you have, for example, a
15 tattoo machine, or did you have to make a tattoo
16 machine?

17 A. No, make one.

18 Q. What would people make the machines out
19 of?

20 A. Tape-recorders, little cassette players.

21 Q. And then, if you know, what would they use
22 for a needle and for ink?

23 A. Then they used to have bands and stuff, so
24 we'd get them from the guitar strings. I've seen
25 them made out of paperclips.

1 Q. What about weapons in prison?

2 A. Yeah, there's plenty of those.

3 Q. And what types of things are weapons made
4 from in the prison environment?

5 A. Pieces of metal from the light fixtures,
6 vents, shampoo bottles.

7 Q. How do you make a shampoo bottle into a
8 weapon?

9 A. You slice it from top to bottom, you heat
10 it, and you turn it and you twist it and you stretch
11 it until it gets hard. You cool it, and then you do
12 the same, and continue the process.

13 Q. In terms of when you were in prison in the
14 SNM, was there any kind of policy on whether or not
15 you should be carrying weapons or when you should be
16 carrying weapons?

17 A. There was always one person that was in
18 charge of the weapons.

19 Q. I want to talk about your time in prison.
20 About how many years of your life have you spent in
21 prison?

22 A. Altogether I've done like 27, 28 years
23 incarcerated.

24 Q. How old are you now?

25 A. 44.

1 Q. So when you first arrived in prison, what
2 can you tell the members of the jury about the
3 prison population in terms of whether you were mixed
4 with other inmates or whether the SNM was in its own
5 housing unit or pod?

6 A. Then everybody lived together. We were --
7 everybody was integrated.

8 Q. And did that make it easier to assault
9 people if they were -- let's say, for example, you
10 had a rival gang member in your pod.

11 A. Yeah.

12 Q. And what was your experience, then, if you
13 had rivals within the same pod? What would
14 typically happen?

15 A. There was plenty of assaults. They would
16 get stabbed, even murdered.

17 Q. What would happen, for example, if you had
18 a disparity in numbers in a pod? Let's say you had
19 ten SNM Gang members and four LC members. How did
20 that usually work out for the LC members?

21 A. That would never happen.

22 Q. Why do you say that?

23 A. It just wouldn't happen. They wouldn't be
24 in the same pod with an SNM member.

25 Q. Why is that?

1 A. They'd probably get stabbed or killed.

2 Q. Was that your experience over the years,
3 that the SNM would stab and kill other inmates?

4 A. Yes. Not just for no reason.

5 Q. Right. So let's say it's another inmate
6 who was not a gang member. If you're getting along
7 okay with that person, was there peace?

8 A. Yes.

9 Q. And what happens if the person was a rival
10 gang member?

11 A. Then there would be a problem.

12 Q. Were there other gangs with which the SNM
13 was at war during your time in prison?

14 A. Yes.

15 Q. Who were some of the other gangs?

16 A. Burquenos.

17 Q. Anybody else?

18 A. No.

19 Q. I want to take you to the year 2001. Do
20 you remember if you were in prison during that time?

21 A. Yes.

22 Q. Did you know anybody by the nicknames
23 Pancho or Looney?

24 A. Yes.

25 Q. How did you know each of those two people?

1 A. I knew Frank from the Main, when I first
2 went to prison. Looney, I just met him there in
3 Cruces when I got there.

4 Q. What was Frank's name?

5 A. Frank Castillo.

6 Q. And was he the one also known as Pancho?

7 A. Yes.

8 Q. Do you know what happened to Pancho?

9 A. Yes.

10 Q. What happened to him?

11 A. He got killed.

12 Q. When he got killed, were you in prison or
13 were you out of prison?

14 A. I was in prison.

15 Q. So he was killed while you were there?

16 A. Not while I was there. I was in prison,
17 but I was just transferred from Southern to the
18 North facility.

19 Q. So how soon after you left your facility
20 was Frank Castillo killed?

21 A. I'd say about two weeks.

22 Q. Do you know if that was an SNM killing?

23 A. Yes.

24 MS. DUNCAN: Your Honor, I'm going to
25 object to this question unless the Government lays a

1 proper foundation for it. I think it's calling for
2 hearsay.

3 THE COURT: Okay. Lay a foundation so we
4 can determine the source of his information.

5 BY MR. CASTELLANO:

6 Q. Did you talk to anybody -- have you had
7 conversations with anybody who was responsible for
8 that killing?

9 A. Yes.

10 Q. And did that person tell you that it was
11 an SNM murder?

12 MS. DUNCAN: Your Honor, I'm going to
13 object. It's rank hearsay.

14 THE COURT: How are you going to avoid the
15 hearsay problem?

16 MR. CASTELLANO: Um --

17 THE COURT: I'm just not seeing it.
18 Sustained.

19 BY MR. CASTELLANO:

20 Q. So can you tell the members of the jury
21 whether Frank Castillo was killed?

22 A. Yes.

23 Q. Was he your friend?

24 A. Yes.

25 Q. In what kind of pod was he when he was

1 killed?

2 MS. DUNCAN: Your Honor, I'm going to
3 object. This is also calling for hearsay.

4 THE COURT: Well, lay some foundation. He
5 may know the answer to this.

6 BY MR. CASTELLANO:

7 Q. Were you living in the same pod with Frank
8 Castillo when you were in the same facility?

9 A. We were in the same unit, but we were in
10 pods next to each other.

11 Q. And who were the people living in those
12 pods at that time?

13 A. SNM members.

14 Q. Speaking of moving into pods, do you know
15 what orientation is?

16 A. Yes.

17 Q. What is orientation?

18 A. It's where they put somebody before they
19 move them into another pod.

20 Q. Just so the jury understands this, can you
21 tell them, if you're new to a pod and you're in
22 orientation, where do you go within that pod?

23 A. What do you mean?

24 Q. So do you move into the pod, but you're
25 not intermingling with the other inmates yet?

1 A. Yeah. They put you in a pod that's
2 segregated from everybody else until you see a
3 committee and they find out who are you and where
4 they're going to place you.

5 Q. Do you know what the purpose is of the
6 orientation?

7 A. To see if you have any enemies within the
8 system.

9 Q. So in other words, if you're getting moved
10 into a new pod and you find out who is in there and
11 you're segregated -- if you're living with them, but
12 you can't intermingle with them yet, does that give
13 you a chance to get out of the pod if you don't want
14 to be there?

15 A. Yes.

16 Q. Are you familiar with the term "checking
17 it in" or "PC'ing"?

18 A. Yes.

19 Q. What do those terms mean?

20 A. When a person don't want to be in the pod
21 or facility, they'll either go to a CO or write a
22 note to the CO saying that their life is in danger
23 and they can't be in there.

24 Q. And in a prison context, what do other
25 inmates think when somebody checks it in or goes

1 into protective custody?

2 A. They're no good.

3 Q. Was that a good thing or a bad thing?

4 A. Bad thing.

5 Q. And does that follow you somewhere else?

6 Do people hear whether someone is PC'd or not?

7 A. Yes.

8 Q. So can that create problems for you even
9 if you move for another pod or another facility?

10 A. Yes.

11 Q. Are you familiar with the term "kiting
12 somebody out"?

13 A. Yes.

14 Q. What does that mean?

15 A. That's when someone writes a letter to the
16 COs, telling them that a certain person's life is in
17 danger, so they get moved out of the pod.

18 Q. And you mentioned the term "COs." Are
19 those the correction officers?

20 A. Correction officers, yes.

21 Q. Has it ever been your experience that
22 people just don't like somebody, and so they make
23 something up like that and get him kicked out of the
24 pod?

25 A. Yes.

1 Q. So would it be fair to say that's kind of
2 part of the politics that happens sometimes in
3 prison?

4 A. Yes.

5 MS. DUNCAN: Your Honor, I object to the
6 leading.

7 THE COURT: Overruled.

8 BY MR. CASTELLANO:

9 Q. You can go ahead and answer that, sir.

10 A. Yes.

11 Q. I want to talk to you about your or other
12 inmates' relationship with the corrections officers.
13 Over the years you were incarcerated, what was
14 generally the relationship between SNM members and
15 corrections officers?

16 A. We basically left them alone. They were
17 there to do their job. We're there to do our time.

18 Q. Now, was it ever your experience that
19 inmates -- I'll focus on the SNM here -- tried to
20 exploit the guards to get them to do things?

21 A. Yes.

22 Q. Like what?

23 A. Bring in drugs.

24 Q. Now, did you ever do that with a guard?

25 A. No.

1 Q. Did you ever receive drugs as a result of
2 someone else getting a guard to bring in drugs?

3 A. Yes.

4 Q. At some point in time, were you in the
5 Southern New Mexico Correctional Facility with
6 someone named Anthony Baca?

7 A. Yes.

8 Q. Do you remember the approximate time
9 period?

10 A. 2011 to 2012.

11 Q. Will you tell the members of the jury
12 whether or not Mr. Baca had any kind of leadership
13 responsibility during that time?

14 A. Yes.

15 Q. What kind of responsibilities did he have?

16 A. When he came back in the state, he took
17 the keys over.

18 Q. All right. You said a couple of things
19 there. When he came back to state, are you saying
20 he went from the streets back into prison, or did he
21 actually come back from another state?

22 A. Came back from another state, another
23 facility.

24 Q. You also mentioned taking the keys. What
25 does that mean?

1 A. Taking over leadership.

2 Q. Do you know the term "llavero"?

3 A. Yes.

4 Q. What does that mean?

5 A. Someone who has the keys, who is driving
6 the car, which is the leader.

7 Q. Now, in terms of the overall structure of
8 the SNM, were there people who were considered
9 higher up in the chain of command?

10 A. Yes.

11 Q. And who have those people been over the
12 years that you knew?

13 A. Angel Munoz, Marty Barros, Juan Baca,
14 Jacobo Armijo.

15 Q. So is that a different Jake Armijo than
16 you?

17 A. Yes.

18 Q. What about someone named Gerald Archuleta
19 or Styx?

20 A. Gerald Archuleta, Styx. Razor Ramon.

21 Q. What about Mr. Baca?

22 A. Yes, Mr. Baca also.

23 Q. So in an SNM pod when somebody comes and
24 takes the keys, what are their responsibilities for
25 that pod?

1 A. It's to keep everybody in line and to make
2 decisions.

3 Q. Have you ever been in charge of a pod
4 before?

5 A. Yes.

6 Q. About when was that?

7 A. 2010, '11 and '12.

8 Q. Where was that?

9 A. Las Cruces, New Mexico.

10 Q. Now, as a person holding a leadership role
11 there, were you then also in charge of enforcing
12 discipline?

13 A. Yes.

14 Q. Okay. So what's a violation?

15 A. A violation is when someone messes up,
16 they more or less get assaulted.

17 Q. Is that assaulted by their own gang?

18 A. Yes.

19 Q. Now, are there different levels of
20 violations?

21 A. Yes.

22 Q. So what would be kind of the range of
23 violations that someone could get? What would be
24 kind of like the least severe to the most severe?

25 A. A punch in the jaw to getting killed.

1 Q. Now, in that 2010-to-2012 timeframe, did
2 you try to have a working relationship with
3 corrections officers?

4 A. Yes.

5 Q. For what purpose?

6 A. To improve our living situation.

7 Q. What type of discussions would you have
8 with them?

9 A. More tier time, more rec, just more
10 privileges.

11 Q. And were there times when you were able to
12 negotiate with the corrections officers?

13 A. Yes.

14 Q. Now, were those the regular guards, or
15 were they the STIU officers? Who would you have
16 spoken with?

17 A. They were the STIUs.

18 Q. Why would you speak to them as opposed to
19 the regular corrections officers?

20 A. Because they were the ones that were in
21 charge of our unit.

22 Q. Why is that? Why STIU?

23 A. Well, they're the security threat group.

24 Q. Why would a security threat group be
25 involved with the SNM, just so the jury understands

1 that?

2 A. They're the ones that -- they're like the
3 gang unit in the streets, but in prison.

4 Q. Now, who was the biggest gang in the
5 prison system when you were there?

6 A. SNM.

7 Q. Who was the toughest?

8 A. SNM.

9 Q. Who was the most violent?

10 A. SNM.

11 Q. Now, when Mr. Baca reached the facility
12 where you were, did he try to make any changes?

13 A. Yes.

14 Q. What kind of changes did he try to make?

15 A. Wanting everybody to exercise daily. He
16 wanted everybody's name, address, phone numbers that
17 was an SNM member. Anybody that got out, he wanted
18 them to send the drugs to him and not anybody else.
19 He just wanted a strict structure.

20 Q. How did you feel about that?

21 A. I didn't agree with a lot of things that
22 he brought to the table.

23 Q. Now you mentioned sending drugs in. When
24 you were out of prison, did you ever send drugs or
25 money into prison?

1 A. I sent money.

2 Q. Who did you send money to?

3 A. Angel Munoz.

4 Q. Why did you send Angel Munoz money?

5 A. To help him out, just to make sure that he
6 was taken care of, that he had food to eat.

7 Q. When you were in prison in the
8 2010-to-2012 timeframe, do you remember which pod
9 you were in? And let me take you back. Were you in
10 the Southern New Mexico Correctional Facility?

11 A. Yes.

12 Q. Which pod?

13 A. I was in 1-A blue pod.

14 Q. As best as you can remember, who was in
15 that pod with you?

16 A. It was me, Stoner, Jerry Montoya, Javier
17 Molina, Joker, Rudy. I think that's all I can
18 remember.

19 Q. And during that time there -- well,
20 when -- when did you leave prison?

21 A. 2012.

22 Q. So when you left prison, was Javier Molina
23 still alive?

24 A. Yes.

25 Q. When Mr. Baca -- did you know him by any

1 other names?

2 A. Pup.

3 Q. When you were housed with him or -- well,
4 you mentioned some other names. Where was he, if he
5 wasn't in blue pod with you?

6 A. He lived in yellow, and also green pod.

7 Q. And so the members of the jury understand
8 kind of how the pods are set up, you mentioned three
9 different colors. Are those three colors or three
10 pods in the same building?

11 A. Yes.

12 Q. And within that building, are the pods
13 separated by walls or something else?

14 A. There is a wall, and then there's doors
15 that go through to connect to all -- each pod.

16 Q. When you have doors between the pods, were
17 you able to communicate with people in the pod next
18 door?

19 A. Yes.

20 Q. How could you communicate with them?

21 A. Like going up to the door and talking
22 through the crack, or there's a space under the door
23 about an inch high.

24 Q. And since there is a gap under the door,
25 were you ever able to pass things under the door?

1 A. Yes.

2 Q. Were you able to do so without the
3 corrections officers catching you?

4 A. Yes.

5 Q. What type of things would you pass between
6 the pods?

7 A. Anywhere from drugs to shanks.

8 Q. What if you wanted to get a message from
9 one pod to the next?

10 A. Yes.

11 Q. What's a kite?

12 A. Just a letter, a regular letter.

13 Q. Have you ever heard the term "wila"?

14 A. Yes.

15 Q. What is that?

16 A. Same thing. It's just a letter.

17 Q. So if you wanted to get a letter to the
18 kite next door, what would you do?

19 A. Knock on the door, call somebody to the
20 door, and slide it under.

21 Q. Was that difficult to do?

22 A. No.

23 Q. And usually when you were in there, were
24 there guards in the room with you, or would they
25 sometimes kind of basically patrol and check on you

1 from time to time?

2 A. They would come through like every hour
3 to -- every half hour to every hour.

4 Q. So then, if you were in the pod and no
5 corrections officer's there, who else might be
6 watching you?

7 A. The cameras.

8 Q. And in terms of the layout of the pod, was
9 there anybody up above looking down into the pod?

10 A. Yes.

11 Q. Can you explain that for the members of
12 the jury? Who was up there and what could you see
13 from inside the pod?

14 A. It's like just a bubble, like a fish tank
15 with big glass on it, and they're just up there and
16 they can look down into the pod.

17 Q. And what would you do -- if there is not a
18 corrections officer in the pod and just someone in
19 the bubble, what would you try to do to avoid being
20 caught passing something underneath the door?

21 A. They really didn't -- really didn't care,
22 as long as it wasn't a shank or anything like that
23 that they could see. But they hardly ever paid
24 attention.

25 Q. And if somebody -- if you passed something

1 underneath the door and a corrections officer came
2 in, how easy or difficult would it be for them to
3 actually get that item -- let's say, a piece of
4 paper? How quickly could it disappear?

5 A. Oh, fast.

6 Q. And how might an inmate make it disappear?

7 A. Flush it down the toilet.

8 Q. So if Mr. Baca is in a pod next to you, do
9 you remember if Carlos Herrera or Daniel Sanchez
10 were housed in that same housing unit at the same
11 time you were?

12 A. Carlos was.

13 Q. Was he in the same pod as you, or a
14 different pod?

15 A. In the pod next to me.

16 Q. Did you know Mr. Baca to be an SNM Gang
17 member?

18 A. Yes.

19 Q. What about Daniel Sanchez?

20 A. Yes.

21 Q. How long have you known him?

22 A. Daniel Sanchez?

23 Q. Yes.

24 A. I've known him for quite a few years.

25 Q. Is that the Daniel Sanchez sitting in the

1 courtroom today?

2 A. Yes.

3 Q. What about Carlos Herrera?

4 A. Yes.

5 Q. Do you see him sitting in the courtroom?

6 A. Yes.

7 Q. And is he an SNM Gang member?

8 A. Yes.

9 Q. Do you know Rudy Perez very much?

10 A. Yes.

11 Q. How well do you know him?

12 A. I've known him for, like, about a year in
13 prison.

14 Q. So from your experience with Rudy Perez,
15 can you say, one way or another, from your
16 experience whether you know he's an SNM Gang member?

17 A. No.

18 Q. So you don't know, either way?

19 A. No.

20 THE COURT: Mr. Castellano, would this be
21 a good time for us to take our afternoon break?

22 MR. CASTELLANO: Yes, Your Honor.

23 THE COURT: All right. We'll be in recess
24 for about 15 minutes. All rise.

25 (The jury left the courtroom.)

1 THE COURT: All right. We'll be in recess
2 for about 15 minutes. Can I get a copy of that
3 letter? Is this 28th letter the late disclosure?

4 MR. BECK: It is, Your Honor. We filed it
5 with the Court, and I just printed out copies
6 downstairs. We'll have that for you.

7 MS. BHALLA: Your Honor, if I may really
8 quickly, before everybody leaves.

9 THE COURT: No.

10 (The Court stood in recess.)

11 THE COURT: All right. Let's go on the
12 record.

13 Ms. Bhalla, I think you had something to
14 bring to the Court's attention.

15 MS. BHALLA: No, Your Honor. I'm sorry, I
16 thought that Mr. Beck was addressing a different
17 letter. I apologize.

18 THE COURT: Okay. You know what it is?
19 You've see it before?

20 MS. BHALLA: Sunday.

21 THE COURT: Here's what I encourage
22 everyone to do. I'm going to take a look at this
23 and make my own assessment. And then obviously,
24 certain defendants are going to have different
25 concerns. So however you want to feed them to me.

1 If you want to if -- you're at home at night or
2 something, you can send me a letter or something, so
3 I can at least consider the arguments. Let me know
4 what you're thinking about these additional
5 disclosures.

6 MR. BECK: Yeah. Just for the record,
7 Your Honor, so I handed up docs 1715 and 1716.

8 THE COURT: These are two different ones?

9 MR. BECK: Yes.

10 THE COURT: I thought it was two copies of
11 one.

12 MR. BECK: 1715, as it indicates in the
13 letter, are statements that we believe come under
14 the co-conspirator exception to hearsay.

15 THE COURT: Which one is that?

16 MR. BECK: That's 1715.

17 THE COURT: Okay. What's the other?

18 MR. BECK: The other, 1716, is statements
19 that we believe are admissions against a party
20 opponent. So instead of just disclosing them all
21 and letting Your Honor sort them out -- although I'm
22 sure you still will -- we tried to make it a little
23 easier for everyone.

24 THE COURT: Admissions of a party
25 opponent.

1 MR. BECK: I mean, I guess the first one
2 there, Javier Molina, that's not an admission by a
3 party opponent. That would be --

4 THE COURT: Excited utterance. That one I
5 recall we addressed. Some of these we may have
6 already discussed?

7 MR. BECK: That's explained in the letter,
8 that some of them may have already been disclosed.
9 But we were disclosing them based on our pretrial
10 meetings.

11 THE COURT: So you understand the two
12 letters I'm getting, Ms. Bhalla?

13 MS. BHALLA: Yes, Your Honor.

14 MR. BECK: And those were the letters that
15 we produced Sunday afternoon, probably evening,
16 maybe, timeframe, Sunday evening. They were
17 additional statements that we encountered in
18 pretrial preparations, or perhaps some were
19 disclosed previously.

20 THE COURT: When we're having bench
21 conferences, they can see the real-time there. So
22 figure out some way, when you come up to the bench,
23 to cover up what's on the real-time, so we don't
24 have a discussion we shouldn't.

25 MR. BECK: We will, Your Honor. We'll put

1 a paper over it every time we come up.

2 THE COURT: Okay.

3 MR. CASTELLANO: Your Honor, if we can
4 find -- we have these reflective covers on the
5 screens, so they can't see it. If we can find an
6 extra one, we'll place it over that.

7 THE COURT: What do you have?

8 MR. BECK: I don't think that's as
9 effective. I think if you're looking straight on,
10 you can see it. So we'll cover it up with a sheet
11 of paper every time we come up there.

12 MS. FOX-YOUNG: Your Honor, was there a
13 note from the juror that they could see the
14 real-time?

15 THE COURT: Not a note, but they were
16 saying when we're doing bench conferences, they can
17 see that thing. We just need to make sure it's
18 covered up. Is it easier to turn it around?

19 MS. FOX-YOUNG: Judge -- I'm sorry to
20 interrupt, Your Honor.

21 MR. BECK: I guess that would be a
22 question for Ms. Bean. Is that all right?

23 MS. FOX-YOUNG: Just for the record, I'd
24 like to make an inquiry as to whether the jurors
25 have been reading the real-time for the entirety of

1 the trial.

2 THE COURT: Did you ask them?

3 THE CLERK: They said they had not. They
4 looked away.

5 MS. FOX-YOUNG: They saw it and looked
6 away?

7 THE CLERK: The one juror.

8 THE COURT: Is that satisfactory, Ms.
9 Fox-Young?

10 MS. FOX-YOUNG: That answers my question,
11 Judge.

12 THE COURT: All right. All rise. But do
13 cover it up over there. Keep it covered.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Mr. Armijo, I'll
16 remind you you're still under oath.

17 THE WITNESS: Yes.

18 THE COURT: Mr. Castellano, if you wish to
19 continue your examination of Mr. Armijo, you may do
20 so at this time.

21 MR. CASTELLANO: Thank you, Your Honor.
22 I'm just showing them another exhibit.

23 THE COURT: That's fine. Take your time.

24 MR. CASTELLANO: Thank you, Your Honor.

25 THE COURT: Certainly.

1 BY MR. CASTELLANO:

2 Q. All right, Mr. Armijo. I earlier asked
3 you about someone named Gerald Archuleta, or Styx.
4 Do you recall that?

5 A. Yes.

6 Q. Can you tell the members of the jury
7 whether you've ever sent drugs to Mr. Archuleta?

8 A. I sent Suboxone strips to him.

9 Q. And when you send him the strips, was that
10 in prison, or was he living somewhere else?

11 A. He was living in Tennessee.

12 Q. How did you send him the Suboxone strips?

13 A. Just through regular mail.

14 Q. Do you remember approximately when that
15 was?

16 A. 2014, 2015.

17 Q. So when Mr. Archuleta moved out of state,
18 did you keep in touch with him?

19 A. Yes.

20 Q. How would you communicate with him?

21 A. Through telephone.

22 Q. And if you recall, approximately how many
23 times did you mail Suboxone strips to him?

24 A. About three or four times.

25 Q. And on each of those occasions, did you

1 use the mail?

2 A. Yes.

3 Q. And when you were in the prison system,
4 did you also use the mail back then? In other
5 words, would you mail -- send mail in and out of the
6 prison system?

7 A. To him?

8 Q. Or anybody.

9 A. Anybody? Yes.

10 Q. Who would you normally send mail to?

11 A. To Gerald Archuleta and Angel Munoz.

12 Q. And why would you write them?

13 A. Just to keep in contact with them, let
14 them know how I was doing, and find out what was
15 going on in there with them.

16 Q. So when you were using the mail, where
17 were each of you located?

18 A. I was either in Albuquerque, they were in
19 prison, or vice versa.

20 Q. Was that just for the purpose of updating
21 each other on the status of things?

22 A. That, and just see how each other was
23 doing.

24 Q. At any time did you guys ever discuss SNM
25 business, what the brothers were doing, or anything

1 like that?

2 A. No.

3 Q. Now, I asked you a little bit about the
4 All Stars earlier. What ever happened to the All
5 Stars?

6 A. They just faded out.

7 Q. Why is that?

8 A. They were really nobody, so they just
9 weren't recognized by anybody, really.

10 Q. So when they tried breaking away from the
11 SNM, what was the SNM's response to them?

12 A. Kind of just shrugged it off.

13 Q. Were any members of the All Stars
14 assaulted by any members of the SNM, that you know
15 of?

16 A. Yes.

17 Q. Who was assaulted?

18 A. I know Chaparro was assaulted. JR. They
19 were, I think, the two founders that started the All
20 Stars.

21 Q. And to the best of your recollection,
22 about how long did the All Stars last as an
23 attempted break-off group?

24 A. About a year and a half, two years at the
25 most.

1 Q. Now, were you aware of the, I guess I
2 would say, disagreement between Mr. Archuleta and
3 Julian Romero?

4 A. Yes.

5 Q. What was that about?

6 A. Julian Romero got out of prison and he
7 went to go pick up drugs from Gerald Archuleta's
8 wife -- I think his wife at the time. And he ended
9 up messing around with her, hooking up with her.

10 Q. Do you know what the drugs were going to
11 be used for? In other words, were they just for his
12 use, or was he going to distribute them or sell them
13 to someone else?

14 A. I think it was for his use and to send
15 back in.

16 Q. When you say "send back in" --

17 A. Back in the prison.

18 Q. What effect did that have on the SNM, when
19 you had two members who were kind of in leadership
20 positions having a dispute like that?

21 A. It caused a big disturbance between a lot
22 of people.

23 Q. I don't want to put words in your mouth,
24 so you can tell me if I'm not stating this right.
25 Would you say that at times there were splits or

1 factions, some people would say they would follow
2 Julian more than Styx, Archuleta, for example?

3 A. Yeah, there was -- Julian tried to get a
4 lot of the guys from Barelás that were in the S to
5 side with him.

6 Q. And so even though there is kind of a
7 split within the gang, did the gang ever become two
8 gangs, or did it remain one gang?

9 A. No, we always remained one gang.

10 Q. So in other words, if you were going to go
11 to war with the LC, and you had guys who liked Styx
12 more than Julian, and you were going to go to war
13 with someone else, would the gang pull together and
14 fight as one or as two?

15 A. Together.

16 Q. I'm going to ask you about tattoos. Do
17 you have any SNM-related tattoos?

18 A. I have two of them.

19 Q. What do they look like?

20 A. The Zia symbol with the SNM in the middle
21 of it.

22 Q. What's the importance of the Zia symbol to
23 the SNM?

24 A. It's our -- it represents our state.

25 Q. And do you know people who are not SNM

1 members who have a Zia tattoo?

2 A. Yes.

3 Q. Do you know SNM members who have a Zia
4 tattoo without an S in it?

5 A. Yes.

6 Q. Do you know SNM members who don't have any
7 SNM tattoos?

8 A. Yes.

9 Q. So does the tattoo itself necessarily tell
10 you anything about whether someone is a member?

11 A. Well, to have the tattoo, obviously, you
12 are a member. Some of them don't; some of them
13 choose not to get it, so they don't get recognized
14 or validated.

15 Q. That leads to my next question, then. So
16 is there a distinction between being an SNM member
17 and being validated by the prison system? Does that
18 make sense?

19 A. Yeah. Well, being validated is being
20 recognized by the, I guess, correction officers, by
21 the STIU.

22 Q. And then what's the difference between
23 what the prison system thinks and what the SNM
24 thinks about membership?

25 A. That's just so we know who's who.

1 Q. In other words, can you be an SNM member
2 but not be validated by the prison system?

3 A. Yes.

4 Q. Do you recall if the prison system ever
5 considered you or validated you as an SNM member?

6 A. Validated me?

7 Q. Yes.

8 A. I'm a validated SNM member.

9 Q. So is it fair to say you're validated by
10 the prison, and separate from what the prison
11 thinks, you are an SNM Gang member?

12 A. Yes.

13 MR. CASTELLANO: May I approach the
14 witness, Your Honor?

15 THE COURT: You may.

16 BY MR. CASTELLANO:

17 Q. Mr. Armijo, I'm going to show you what's
18 page 63 of Exhibit 251. I'll have you take a look
19 at it and see if you recognize that.

20 A. Yes.

21 Q. How do you recognize it?

22 A. It's a picture of myself and other
23 members.

24 Q. Do you know all the members in that
25 exhibit?

1 A. Yes. There's two people that ain't
2 members.

3 Q. Okay. Let's talk about that. Thanks.

4 A. Um-hum.

5 Q. And is this a fair and accurate depiction
6 of the photo as you remember it when it was taken?

7 A. Yes.

8 MR. CASTELLANO: Your Honor, I move the
9 admission of Government's Exhibit 251. I will note
10 this is a large exhibit, so this is page 63 of that
11 exhibit. And it's Baca Bates stamped 7840.

12 THE COURT: So you're just introducing the
13 one page out of it?

14 MR. CASTELLANO: That's correct.

15 THE COURT: Any objection?

16 MR. VILLA: Your Honor, I don't object to
17 it, but I'm wondering, if it's just one page,
18 whether it ought to be designated by a different
19 number, or 251-A or something.

20 MR. CASTELLANO: I'm happy to designate it
21 any way that makes it clear.

22 THE COURT: All right. Why don't you make
23 it 251-A? Not hearing any objection, Government's
24 Exhibit 251-A will be admitted into evidence.

25 (Government Exhibit 251-A admitted.)

1 MR. CASTELLANO: With the Court's
2 permission, I'll publish that to the jury.

3 THE COURT: You may.

4 BY MR. CASTELLANO:

5 Q. For now, if we can just zoom in on the
6 picture. While that's happening, Mr. Armijo, okay,
7 you mentioned some people there were members and
8 some people were not members; is that correct?

9 A. Yes.

10 Q. Now, it looks like they have numbers over
11 there. So if we can start with Number 1, who is
12 that person?

13 A. That was Ralph Mendez, I think. I don't
14 remember his last name.

15 Q. While you're doing that, I'm going to have
16 you move the microphone. I know you're looking at
17 the screen. Move it in front of you so the jury can
18 hear you.

19 A. Ralph.

20 Q. And who is Number 2?

21 A. Well, we called him Cookies.

22 Q. That's the name you know him by?

23 A. Yeah.

24 Q. And are the people in the picture Number 1
25 and Number 2 -- are either of those people SNM Gang

1 members?

2 A. Number 1, no. Number 2, yes.

3 Q. All right. So why was Number 1 taking a
4 picture with the other people, just so we understand
5 that?

6 A. We were all good friends.

7 Q. Number 3?

8 A. That's myself.

9 Q. Is that a young you?

10 A. Yes.

11 Q. Number 4?

12 A. That's Angel Munoz.

13 Q. Number 5?

14 A. Joe Bojon, I think his last name. Joe
15 Bojon. He's not an SNM member.

16 Q. Number 6?

17 A. I don't remember his name. He's not an
18 SNM member. He was from El Paso, Texas.

19 Q. And Number 7?

20 A. He also -- I don't remember his name, but
21 he's not an SNM member. He was originally from
22 California somewhere. Norwalk, I think.

23 Q. And is it common for inmates in prison to
24 take photos like this?

25 A. Yes.

1 Q. And what's the purpose of doing something
2 like this?

3 A. Just for memories.

4 Q. Have you in the past taken photos of just
5 you with a group of fellow gang members?

6 A. Yes.

7 Q. Now, Number 4 is who, again?

8 A. Angel Munoz.

9 Q. So tell us about Angel Munoz. You told us
10 a little bit about him earlier, but how big was he
11 in the SNM?

12 A. He was pretty big. He was, I think, one
13 of the founding fathers that founded the SNM.

14 Q. And did you consider yourself close with
15 him?

16 A. Yes, very close.

17 Q. Did you discuss the history of the SNM
18 with him?

19 A. Yes.

20 Q. And what do you know about how the SNM was
21 born?

22 A. It was born after the riots, the '80
23 riots, that happened in the main. They basically
24 got together, and it wasn't really, like, about, I
25 don't know, like gang membership. It was really a

1 group of guys that took care of each other and that
2 tried to represent the inmates from the -- I guess
3 to get them more living conditions, you know what I
4 mean? The living conditions, better living
5 conditions, better food, better everything.

6 Q. And over time, what did the SNM become?
7 You said basically they were just guys looking out
8 for each other, a brotherhood?

9 A. Yeah. It was them against the
10 administration.

11 Q. And how did that change over time?

12 A. Drugs became a big issue. I guess it's
13 always drugs, always been a big issue inside the
14 prison system. They were easy to get in. Everybody
15 did them. Everybody bought them.

16 Q. So would it be common for SNM Gang members
17 to use drugs in prison?

18 A. Yes.

19 Q. Did that create problems in terms of
20 holding everyone together and organization and
21 leadership?

22 A. Yes.

23 Q. And even with all the problems and the
24 politics and things like that, did the SNM still
25 remain a gang, and did you still look out for each

1 other?

2 A. To a point, yeah. At the end, to a point.
3 It got kind of pretty bad, to a point where
4 everybody was bickering with everybody, everybody
5 was taking sides.

6 Q. Would you equate it to a dysfunctional
7 family?

8 A. Yes.

9 Q. Is that one of the problems you eventually
10 had with the gang?

11 A. Yes.

12 Q. All right. Now, you mentioned Angel Munoz
13 as a founding father. Who would be considered other
14 founding fathers of this gang?

15 A. I mentioned them before. Jacobo Armijo,
16 Marty Barros, Juan Baca. Those are like the main
17 ones that I know of.

18 Q. Did you know them personally?

19 A. Yes.

20 Q. Can you tell the members of the jury
21 whether you're currently in custody or currently on
22 conditions of release?

23 A. I'm on conditions of release.

24 Q. What does that mean? Does that mean you
25 have to report to somebody who supervises you?

1 A. Yes, I wear an ankle monitor bracelet.

2 Q. What else do you have to do as part of
3 your conditions?

4 A. Keep a job and stay out of trouble.

5 Q. And I won't ask you where you work, but
6 are you currently working?

7 A. Yes.

8 Q. About how many hours a week do you work?

9 A. About 40. Close to 40 hours a week.
10 Maybe a little less some days, depending on the
11 times of year that it gets slow.

12 Q. I'm going to talk to you about any
13 benefits you received from the Government in
14 connection with your cooperation in this case. Can
15 you tell the members of the jury whether you
16 received any money from the Government in exchange
17 for any cooperation?

18 A. No.

19 Q. While you've been on conditions of
20 release, have you violated those conditions at any
21 time?

22 A. Yes.

23 Q. How did you violate your conditions?

24 A. A dirty UA.

25 Q. Is a UA a urinalysis?

1 A. Urinalysis test.

2 Q. How many times have you had a dirty
3 urinalysis?

4 A. Twice.

5 Q. Do you recall if it was two times or three
6 times?

7 A. Three times.

8 Q. What did you test positive for?

9 A. Heroin.

10 Q. On these occasion and more recently, why
11 did you use heroin?

12 A. I suffer from arthritis in my hands, feet,
13 and back, and I was prescribed hydrocodones. And
14 when the hydrocodones weren't working as good, I
15 started used heroin to kill the pain.

16 Q. How did you use the heroin?

17 A. Intravenously. The last time I was just
18 snorting it.

19 Q. Have you had any problems other than those
20 three dirty urinalyses?

21 A. No.

22 Q. On any of those occasions were you
23 arrested for your violation of conditions of
24 release?

25 A. Once.

1 Q. And after your arrest, based on how were
2 doing, were you then released on conditions again?

3 A. Yes.

4 Q. When is the last time you were in prison?

5 A. 2012.

6 Q. So have you been to jail or prison since
7 that time?

8 A. Yes.

9 Q. For what?

10 A. Well, for the last dirty UA, and for the
11 roundup on the conspiracy charge for the
12 racketeering.

13 Q. So both of those times related to this
14 case?

15 A. Yes.

16 Q. Anything else? It's been almost six years
17 now?

18 A. That I've been out? Yes.

19 MR. CASTELLANO: Your Honor, I pass the
20 witness.

21 THE COURT: Thank you, Mr. Castellano.

22 Do you want to go first, Mr. Villa?

23 MR. VILLA: If I may, Your Honor.

24 THE COURT: You may.

25 MR. VILLA: Thank you, Judge.

1 THE COURT: Mr. Villa.

2 CROSS-EXAMINATION

3 BY MR. VILLA:

4 Q. Good afternoon, Mr. Armijo.

5 A. Good afternoon.

6 Q. So Mr. Armijo, you knew Rudy Perez?

7 A. Yes.

8 Q. You all were in prison together in the
9 Southern New Mexico Correctional Facility?

10 A. Yes.

11 Q. And I believe you said you were there
12 until 2012; is that correct?

13 A. Yes.

14 Q. You were in what we call the blue pod?

15 A. Yes.

16 Q. And during that time in the blue pod, Mr.
17 Perez was there with you?

18 A. Yes.

19 Q. Do you remember what month you left in
20 2012?

21 A. That I left?

22 Q. Yes, sir?

23 A. March 2012.

24 Q. All right, March. So before you left, do
25 you recall Mr. Perez had health problems?

1 A. Yes.

2 Q. He had trouble with his legs, trouble
3 walking?

4 A. Yes.

5 Q. And at that time he was using a cane;
6 correct?

7 A. Yes.

8 Q. And he also had other health problems, had
9 to go to medical a lot?

10 A. Yes.

11 Q. And he oftentimes stayed in his room?

12 A. Yes.

13 Q. Slept a lot?

14 A. Yes, he did.

15 Q. Didn't always go outside for recreation?

16 A. No.

17 Q. While you were there, did you know Mario
18 Rodriguez?

19 A. Does he have another name he goes by?

20 Q. Sometimes he goes by the moniker Blue.

21 A. No, I never met Blue until at the North
22 facility.

23 Q. When did you meet Blue at the North
24 facility?

25 A. I can't recall.

1 Q. Was that after 2012?

2 A. No.

3 Q. Did you meet him before 2012?

4 A. Before 2012. But he wasn't in Cruces
5 while I was there.

6 Q. I understand. Did he have a reputation in
7 the SNM?

8 A. Yes.

9 Q. What was his reputation?

10 A. I heard he was crazy and he was down to do
11 what he had to do.

12 Q. He was crazy, meaning --

13 A. He handled his business.

14 Q. Scary guy?

15 A. Yeah.

16 Q. Would commit a lot of acts of violence?

17 A. That's what I would assume, yes.

18 Q. And at the time, in 2012, at least, and
19 maybe 2011, Mr. Perez' reputation was mostly he was
20 sick and in bed; right?

21 A. Yes.

22 Q. And he wasn't the leader?

23 A. No.

24 Q. He wasn't the llavero?

25 A. No.

1 Q. The llavero is the key-holder or someone
2 who has a leadership role in the pod?

3 A. Yes.

4 Q. You testified a little bit about kind of
5 the way things work with the gang, and I want to ask
6 you about that. You testified about if somebody was
7 going to be moved on; right? Do you remember that
8 term?

9 A. Yes.

10 Q. That means that they were going to be
11 either assaulted or murdered or attacked in some
12 way; right?

13 A. Yes.

14 Q. And if certain members of the SNM decided
15 to move on somebody, and other members of the SNM
16 tried to stop them, what would happen to them?

17 A. I guess it would depend on who the other
18 members were, and what evidence they had to move on
19 that person.

20 Q. Well, let me ask you this. If a group of
21 SNM members were conspiring to commit a murder and
22 another SNM member, who wasn't part of the
23 conspiracy, reported that to the authorities to try
24 to stop it, reported it to a CO or somebody, what
25 would happen to that SNM member?

1 A. He'd probably get killed.

2 Q. And if that SNM member was physically able
3 and tried to physically stop those other members
4 from committing a murder, what would happen to that
5 SNM member?

6 A. He would probably be murdered along with
7 him.

8 Q. You talked about making weapons and
9 shanks. Do you remember that?

10 A. Yes.

11 Q. Was there a common name for a shank called
12 an ice pick?

13 A. Yes.

14 Q. What's an ice pick?

15 A. Ice picks are used from pieces of the
16 fence. They're better used because it's harder to
17 stop the bleeding from a puncture hole.

18 Q. So you're not talking about an ice pick
19 that I might buy at the store to pick ice.

20 A. No.

21 Q. It's just a term that was used for certain
22 types of shanks?

23 A. Yes.

24 Q. And you said they were made out of the
25 fence. You're talking about --

1 A. The ice pick would be similar to a regular
2 ice pick that you would buy at the store.

3 Q. So it would look like that?

4 A. Yes.

5 Q. So it was like a chain link fence?

6 A. Yes, it could be.

7 Q. Were there other things that folks made
8 ice picks out of?

9 A. No, not really. Just something real thin,
10 a thin piece of metal that could be real thinned-out
11 to look like an ice pick.

12 Q. And you testified that there was always
13 somebody that's in charge of the weapons or the
14 shanks; right?

15 A. Yes.

16 Q. So that person is responsible for knowing
17 where they are or holding onto them?

18 A. Yes.

19 Q. Was that true when you were in the blue
20 pod in 2012?

21 A. Yes.

22 Q. You testified that Javier Molina was in
23 the blue pod in 2012; correct?

24 A. Yes.

25 Q. Was he responsible for holding the shanks

1 at that time?

2 A. No.

3 Q. Do you know if he ever was?

4 A. Not while I was there, no.

5 Q. You talked about if somebody PCs
6 themselves -- and "PC" stands for protective
7 custody; right?

8 A. Yes.

9 Q. I think you testified on direct that's
10 when somebody says, "My life is in danger," and they
11 tell a CO or someone else in the prison so they can
12 get moved out of where they are; right?

13 A. Yes.

14 Q. But you said that oftentimes people hear
15 about that.

16 A. Yes.

17 Q. And so that person can be in danger for
18 PC'ing themselves; right?

19 A. Yes.

20 Q. They hear about it because things like
21 that spread fastly in the prison; right?

22 A. Yes.

23 Q. Spread fast, I guess I should say. And
24 that includes among the members of the gang; rumors
25 can spread quickly, can't they?

1 A. Yes.

2 Q. And talking about that, you talked about
3 how if somebody is perceived to be a -- cooperating
4 with law enforcement, or a rat or snitch, they could
5 be killed; correct?

6 A. Yes.

7 Q. And you testified that oftentimes members
8 wanted to see paperwork about whether the person was
9 an informant; right?

10 A. Yes.

11 Q. But isn't it true that part of the
12 division that you talked about in the SNM, the
13 disagreements that took place, was whether you
14 needed paperwork or not to move on somebody who you
15 thought was a snitch?

16 A. Yes.

17 Q. So there were factions or groups of gang
18 members who would be willing to move on somebody
19 even without paperwork?

20 A. Yes.

21 Q. So if there was a rumor that had spread
22 about somebody being an informant, they could be
23 moved on or killed even though maybe they weren't an
24 informant.

25 A. Yes.

1 Q. Did you often run across situations when
2 you were in the SNM where people took responsibility
3 for things they didn't do?

4 A. Yes.

5 Q. So they said that they played a role in
6 maybe a hit or an assault, but really they didn't?

7 A. Yes.

8 MR. VILLA: May I have just a moment, Your
9 Honor?

10 THE COURT: You may.

11 MR. VILLA: No more questions.

12 THE COURT: Thank you, Mr. Villa.

13 Mr. Jewkes, do you have cross-examination
14 of Mr. Armijo?

15 MR. JEWKES: Yes, Your Honor. Your Honor,
16 may it please the Court?

17 THE COURT: Mr. Jewkes.

18 CROSS-EXAMINATION

19 BY MR. JEWKES:

20 Q. Good afternoon, Mr. Armijo.

21 A. Good afternoon.

22 Q. How are you, sir?

23 A. Been better.

24 Q. Mr. Armijo, you joined the SNM in 1993?

25 A. Yes.

1 Q. Correct?

2 A. Yes.

3 Q. And at that time, I believe you said, you
4 were the personal bodyguard to Angel Munoz?

5 A. Yes.

6 Q. How big a man was he in the SNM? Was he
7 at the very top?

8 A. Very top.

9 Q. Very top?

10 A. Very top.

11 Q. He was the man.

12 A. Yes.

13 Q. And you were his bodyguard.

14 A. Yes.

15 Q. This party that you went to in Santa Fe --
16 there was some kind of wedding party for somebody in
17 Angel Munoz' family; is that correct?

18 A. I didn't know what it was for. I just
19 know it was a party.

20 Q. Okay. But you had problems with a couple
21 of guys?

22 A. One.

23 Q. One guy? He disrespected Angel Munoz?

24 A. Yes.

25 Q. How did he go about doing that?

1 A. He was drunk, just constantly talking down
2 to him.

3 Q. And you stepped in?

4 A. Yes.

5 Q. You waited until he went behind the house;
6 correct?

7 A. Yes.

8 Q. And then what did you do, sir?

9 A. I stabbed him.

10 Q. Where did you stab him?

11 A. In the body area.

12 Q. Torso?

13 A. Yes.

14 Q. How many times?

15 A. About three, four times.

16 Q. What did you do with his body?

17 A. We left. I didn't do nothing with it.
18 Just left.

19 Q. Did the man live or die?

20 A. I assume he's still alive. I've never
21 heard nothing about it. I watch the news a lot, so
22 I've never -- nothing ever happened, came out about
23 it. I'm sure I would have heard about it through
24 Angel's wife if he had died.

25 Q. All right, sir. Now, was it before that

1 or after that that you got your throat cut?

2 A. It was before.

3 Q. It was before?

4 A. Yes.

5 Q. So the incident in Santa Fe -- that
6 happened before you had some problems with some
7 African-Americans; is that correct?

8 A. Can you repeat that?

9 Q. If I understood you correctly, your throat
10 was cut by a black inmate.

11 A. Yes.

12 Q. When I said African-American, I meant
13 black.

14 A. Yes, I know.

15 Q. Where did that happen?

16 A. In the Santa Fe -- in the main facility.

17 Q. Now, this fight that you had with that
18 black inmate -- was that political? In other words,
19 did it have -- was it gang business or was it
20 personal?

21 A. It was personal.

22 Q. He disrespected you?

23 A. Yes.

24 Q. So the two of you locked horns.

25 A. Yes.

1 Q. That sort of thing happens in prison quite
2 a bit, doesn't it?

3 A. Yes.

4 Q. Personal disputes.

5 A. Yes.

6 Q. They call them personal beefs.

7 A. Yes.

8 Q. It's not always gang-related, is it?

9 A. No.

10 Q. If you're going to live in prison, you
11 have to stand up for yourself. Would you agree with
12 that?

13 A. Yes.

14 Q. Or you go down.

15 A. Yes.

16 Q. You mentioned the name Daniel Sanchez.

17 A. Yes.

18 Q. Okay. Now, I don't want to insult you,
19 but you're an old-timer.

20 A. Yes.

21 Q. Are you familiar with the term OTG?

22 A. Yes.

23 Q. You know what it means. Old-time
24 gangster.

25 A. Yes.

1 Q. You've been around since the early '90s.

2 A. Yes.

3 Q. Did you ever know Daniel Sanchez?

4 A. Yes.

5 Q. Old Daniel Sanchez?

6 A. Old?

7 Q. Yeah. There are two different Daniel
8 Sanchezes.

9 A. Um-hum.

10 Q. You know that; right?

11 A. Yes. One from Belen, and then Danny.

12 Q. And this Danny.

13 A. Yes.

14 Q. Okay. How well did you know old Daniel
15 Sanchez?

16 A. Cowboy Dan? I know him pretty good.

17 Q. Cowboy Dan?

18 A. That's what we called him.

19 Q. Some folks also called him Dan Dan.

20 A. Dan Dan, yes.

21 Q. Okay. This gentleman right here that you
22 pointed out -- where is he from?

23 A. I don't remember.

24 Q. You don't know?

25 A. No.

1 Q. Did you ever do time with him?

2 A. Yes.

3 Q. There was one brief period -- correct me
4 if I'm wrong -- in 1993, maybe '94, when the two of
5 you were together at PNM; correct?

6 A. Yes.

7 Q. How long were the two of you together?

8 A. Not very long.

9 Q. A short period of time?

10 A. Yes.

11 Q. And you really haven't had any dealings
12 with him or seen him since '94; isn't that correct?

13 A. No.

14 Q. No?

15 A. No. We've ran into each other. We've
16 done a lot of time at the North. He's been at the
17 North facility for quite a few years, and so have I.

18 MR. JEWKES: If I may have just a moment,
19 Your Honor?

20 THE COURT: You may.

21 BY MR. JEWKES:

22 Q. You were asked a question, I believe it's
23 by Mr. Castellano, about when you're in the pod with
24 a bunch of guys, do you make something up -- in
25 other words, you lie -- and you can get in trouble

1 for that with the other guys. Did I characterize
2 that correctly?

3 A. No.

4 Q. No?

5 A. What do you mean by making up lies?

6 Q. Saying you did things that you really
7 didn't.

8 A. Oh, right. Taking responsibility for
9 something that you didn't do?

10 Q. Yes, sir.

11 A. Yes.

12 Q. And that's what I'm talking about. You
13 can get in trouble doing that.

14 A. Yes.

15 Q. But yet, there are guys that do that,
16 don't they?

17 A. Yes.

18 Q. They make up stories.

19 A. Yep.

20 Q. And how many years have you done in prison
21 altogether?

22 A. Did 22 years in prison.

23 Q. So you've just about seen it all, haven't
24 you?

25 A. Yes.

1 Q. Been around all kinds of people.

2 A. Yes.

3 Q. And you get some of these guys, they want
4 to be somebody, so they make up stories.

5 A. Yes.

6 Q. You've seen that?

7 A. Yes.

8 Q. Mr. Armijo, I'm going to skip around some,
9 because I'm going to try and save us some time.

10 You were talking about the COs don't
11 really care about -- or didn't really care about
12 kites, as long as what was going under the doors
13 wasn't shanks. Did I characterize that correctly,
14 or am I off base?

15 A. Kind of. It wasn't really that they
16 didn't care about kites. They just rarely paid
17 attention to what was going on in the pod.

18 Q. Why not?

19 A. As long as we were doing what we had to
20 do, and behaving, they mostly sat up in the bubble
21 and played on their phones, really.

22 Q. Where was that, sir?

23 A. In the bubble, above.

24 Q. Which unit? North, South, Southern? PNM.

25 A. At all prisons.

1 Q. All prisons?

2 A. All prisons are like that.

3 Q. Tell us about the COs. What -- do they
4 work hard?

5 A. I guess some of them do. Some of them do
6 the job. Some of them are just there to get a
7 paycheck and go home.

8 Q. When you use the term "CO," we're talking
9 about correctional officers.

10 A. Yes, sir.

11 Q. And you've seen them sit up in that bubble
12 and not really pay much attention to what's going on
13 down below?

14 A. Yes.

15 Q. Do drugs ever change hands down below?

16 A. Oh, yes.

17 Q. Do those COs pay any attention to that?

18 A. No.

19 Q. Now, if a shank changes hands, somebody is
20 liable to wake up; right?

21 A. Not necessarily.

22 Q. No? Not necessarily? So it's pretty much
23 anything goes, as long as we're not making too much
24 noise or creating too much of a disturbance. Would
25 that be pretty accurate?

1 A. Yes.

2 Q. How prevalent are drugs inside the prison
3 system, Mr. Armijo?

4 A. At a time, they were there constantly.

5 Q. Suboxone?

6 A. Nowadays, yes.

7 Q. Yes. How about the old days? What was
8 prevalent?

9 A. Heroin and marijuana.

10 Q. What about meth?

11 A. They came in occasionally, but that would
12 usually stay between the white guys.

13 Q. What about cocaine?

14 A. Like, occasionally.

15 Q. Cocaine is pretty expensive, isn't it?

16 A. Yeah.

17 Q. Always has been, hasn't it? These
18 Suboxone strips that you sent to Gerald Archuleta --
19 how were you able to conceal them?

20 A. Can I use this?

21 Q. Well, we'll ask the Judge.

22 MR. JEWKES: May he?

23 A. Just fold it up, put it in there, and put
24 it in the mail.

25 Q. What keeps the strips from falling out?

1 A. They're in an envelope.

2 Q. So they're just loose?

3 A. Yeah. I was doing that while I was on the
4 streets, while I was free, so -- just a regular
5 letter.

6 Q. Inmates like Suboxone because it's fairly
7 easy to conceal, is it not?

8 A. Yes.

9 Q. Okay. You were asked about tattoos.

10 A. Yes.

11 Q. Once again, what are the popular SNM
12 tattoos, Mr. Armijo?

13 A. The Zia with an SNM inside it.

14 Q. Okay.

15 A. That's it.

16 Q. That's it?

17 A. That's the only one that I know of.

18 Q. The Zia, which is the official --

19 A. New Mexico symbol.

20 Q. -- New Mexico symbol. Yes, sir. By the
21 way, did you know that it's -- if I'm not mistaken,
22 I think it's an old Zuni symbol.

23 A. Yes.

24 Q. It has some kind of religious
25 significance.

1 A. Yes.

2 Q. What if a guy has the Lord's Last Supper
3 tattooed on his abdomen? Would that be an
4 indication he was SNM?

5 A. No.

6 Q. Myself, I would take that as a religious
7 scene. Would you not also do that?

8 A. Yes.

9 Q. What about a tattoo of a charra? You know
10 a charra?

11 A. Yes.

12 Q. A Chihuahua cowgirl.

13 A. Yes.

14 Q. You've seen them.

15 A. Yes.

16 Q. The big hats and low-cut blouses. You
17 know the story.

18 A. Yes.

19 Q. Is that an SNM symbol?

20 A. No.

21 Q. No? It's fairly popular with young
22 Hispanic males. Would you agree with that?

23 A. Yes.

24 Q. What about a tattoo of Pancho Villa on the
25 shoulder?

1 A. No.

2 Q. Not SNM?

3 A. No.

4 Q. Basically, that's Mexican folklore or
5 history, really.

6 A. It's history, yes.

7 Q. Yeah, Pancho Villa was a very well-known
8 general during the revolution.

9 A. Yes.

10 Q. Mr. Armijo, tell us how you know you're a
11 validated SNM member. What happened in your life to
12 make you validated?

13 A. I have the tattoos. I have an SNM tattoo
14 on my body.

15 Q. Okay. But there have been incidences of
16 people that have SNM tattoos that were not true SNM
17 members; am I correct, or am I way off base there?

18 A. I've never known to know one.

19 Q. No?

20 A. No.

21 Q. So everybody who has SNM tattooed on them,
22 somewhere on their body, is a validated member? Is
23 that your understanding?

24 A. Yes.

25 Q. There are no phonies running around?

1 A. Of course.

2 Q. Someone could have an SNM tattoo.

3 A. Yes.

4 Q. Wouldn't be too smart. Just a few more
5 points, Mr. Armijo. You also made mention, in
6 response to questioning from Mr. Villa there, about
7 rumors spread quickly in prison.

8 A. Yes.

9 Q. It's not at all uncommon for someone, an
10 inmate, to brag about something he didn't do to make
11 himself more elevated. Would you agree with that?

12 A. Yes.

13 Q. And a lot of these rumors that spread
14 through the community -- I'm talking about the
15 prison community -- they are lies, are they not?

16 A. A lot of them could be.

17 Q. Okay. What made you decide to cooperate,
18 Mr. Armijo, after 20-some-odd years?

19 A. I kind of lost faith in everything that I
20 believed in. And I have better things to do with my
21 life than to pussy-foot around in my old ways. I've
22 grown up, in other words.

23 Q. Well, I commend you for that, wanting to
24 improve your life. But what was it? The politics
25 that turned you off?

1 A. Yeah, the politics, the back-stabbing, the
2 loyalty, just the common bullshit that goes on
3 nowadays, everybody wanting to be a leader.

4 Q. How long have you been cooperating, sir?

5 A. Since, like, about four months after the
6 incident happened that we got rounded up.

7 Q. You pled guilty on March 1st of 2017.
8 Does that sound right?

9 A. Yes.

10 Q. And you did so with a plea agreement, did
11 you not?

12 A. Yes.

13 Q. And are you expecting to receive any type
14 of benefit for what you're doing?

15 A. Yes.

16 Q. All right, sir. Please tell me what you
17 expect to receive.

18 A. A reduced sentence.

19 Q. How much reduced?

20 A. Whatever is there.

21 Q. Mr. Armijo, have you received any type of
22 money from the FBI since you agreed to cooperate?

23 Any type of financial assistance of any sort?

24 A. No.

25 Q. Have you received any kind of living

1 benefits?

2 A. They rented me a room. That was it, for
3 these last couple of days.

4 Q. For your appearance here?

5 A. Yes.

6 Q. Have they helped you get employment?

7 A. No.

8 Q. Have they helped you relocate to someplace
9 to live?

10 A. No.

11 Q. Mr. Armijo, are you the same Manuel Jacob
12 Armijo that was convicted in 1991 on two counts of
13 aggravated assault out of the Second Judicial
14 District Court of Bernalillo County?

15 A. 1991?

16 Q. That would have been in 1991.

17 A. Probably, yes.

18 Q. Probably?

19 A. Yes.

20 Q. Are you the same Manuel Jacob Armijo that
21 was convicted in 1994 for escape from jail in San
22 Juan County?

23 A. Yes.

24 Q. Are you the same Manuel Jacob Armijo who
25 was convicted of commercial burglary on November

1 1st, 1994, out of the Second Judicial District Court
2 of Bernalillo County?

3 A. I could be. I don't remember all my
4 charges, everything that I've been convicted of.

5 Q. After you pled guilty this last time, do
6 you remember sitting down with a probation officer?

7 A. Yes.

8 Q. And the two of you went through much of
9 what we're talking about now; correct?

10 A. Yes. I went through it with my lawyer. I
11 never went through it with the P.O., I mean, with
12 the probation officer.

13 Q. Fair enough. Fair enough.

14 Are you the same Mr. Armijo who was
15 convicted in March of 1998 for possession of
16 methamphetamine out of the 11th Judicial District
17 Court in San Juan County?

18 A. Yes.

19 Q. What about the same gentleman who, on June
20 15, 2001, was convicted of distribution of a
21 controlled substance?

22 A. Yes.

23 Q. Okay. The same gentleman who, on July 29,
24 2006, was convicted of possession of a controlled
25 substance, to wit: methamphetamine --

1 A. Yes.

2 Q. -- out of the Second Judicial District;
3 that would have been Albuquerque.

4 What about on January 26, 2007, receiving
5 and transferring a stolen vehicle, out of the Second
6 Judicial District Court?

7 A. Yes.

8 Q. Once again, on March 13, 2007, receiving
9 or transferring a stolen vehicle, out of the Second
10 Judicial District Court.

11 A. I know there was a couple of those that I
12 did not do. I know -- I think I have one
13 transferring and receiving a stolen vehicle.

14 Q. Yes, sir.

15 A. Yes, sir.

16 Q. What about September 9, 2007, attempted
17 battery on a peace officer out of the Second
18 Judicial District Court of Bernalillo County?

19 A. No.

20 Q. You were not convicted on that?

21 A. No.

22 MR. JEWKES: May I approach counsel for
23 the Government?

24 THE COURT: You may.

25 MR. JEWKES: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 A. I don't think that's me. If this is the
4 description of the person, that's not me. It says
5 5'3". I'm 6'3", so that would not be me.

6 BY MR. JEWKES:

7 Q. If I were you, I'd have a little talk with
8 my probation officer.

9 MR. JEWKES: I pass the witness.

10 THE COURT: Thank you, Mr. Jewkes.

11 Mr. Maynard, do you have cross-examination
12 of Mr. Armijo?

13 MR. MAYNARD: Yes, Your Honor. Thank you.

14 THE COURT: Mr. Maynard.

15 CROSS-EXAMINATION

16 BY MR. MAYNARD:

17 Q. Mr. Armijo, when you were questioned by
18 Mr. Castellano, and again by Mr. Jewkes, I believe
19 you mentioned back-stabbing, the word back-stabbing.

20 A. Yes.

21 Q. You'd kind of had enough of that.

22 A. Yes.

23 Q. Okay. What did you mean by that?

24 A. Just when one of your own brothers tries
25 to put a hit on you for apparently no reason at all,

1 kind of, it's a tipping point.

2 Q. And a lot of people were putting hits on
3 each other for personal grudges.

4 A. Yeah.

5 Q. You saw that over the years.

6 A. Yes.

7 Q. You mentioned, in fact, that SNM started
8 to change when some of the old-timers left.

9 A. When they died, yes.

10 Q. Everybody wanted to be a boss?

11 A. Yes.

12 Q. Everybody wanted to make their own rules.

13 A. Yes.

14 Q. Now, when you joined, many years ago, what
15 was the main reason?

16 A. I saw what another person was willing to
17 do that really didn't know me, what they were
18 willing to jeopardize.

19 Q. Was fear one of the reasons?

20 A. That I joined?

21 Q. Yes.

22 A. No.

23 Q. You weren't afraid?

24 A. No.

25 Q. You didn't do it for protection?

1 A. No.

2 Q. Then why did you do it?

3 A. I just told you.

4 Q. Because other people were vulnerable?

5 A. No. Because I saw where their heart was
6 at and what they were willing to do to put their
7 life in jeopardy for me.

8 Q. Okay. So in your perception, at first, it
9 was something based on trust.

10 A. Not trust, just --

11 Q. Solidarity?

12 A. Looking out for your own kind.

13 Q. Looking out for each other.

14 A. For each other.

15 Q. So there is some sort of protection in
16 being part of a community.

17 A. There could be.

18 Q. Right. Now, would it be fair to say that
19 Angel Munoz many, many years ago was a key in you
20 deciding to join?

21 A. No.

22 Q. No?

23 A. No.

24 Q. He had no influence on your decision?

25 A. No.

1 Q. And yet you committed violent acts to
2 protect his respect.

3 A. Yes.

4 Q. Just -- I'm trying to understand.
5 Thinking back, why did you do that?

6 A. It was my duty. It was what I was told to
7 do, what I was told -- how I was told to watch him
8 and make sure nothing happens to him.

9 Q. Okay.

10 A. And over the years, we got close and I've
11 earned a great amount of respect for him.

12 Q. Now, you also used a term, "to move on
13 somebody."

14 A. Yes.

15 Q. That doesn't necessarily mean to murder.
16 It could mean to extort, could it not, or it could
17 mean to assault?

18 A. It means to assault.

19 Q. All right. Now, so what changed that
20 happened over the years, as time went by, people
21 started putting hits on each other for personal
22 reasons, like a hit was put on you.

23 A. Yes.

24 Q. And that had no connection to the gang
25 itself. It was just personal.

1 A. I believe it was personal.

2 Q. Right. And in fact, if I understand your
3 testimony, that's why you felt the dispute between
4 Archuleta and Romero did a disservice to the SNM.

5 A. Yes.

6 Q. Because if someone can put a hit -- that
7 is, send out a rumor on someone --

8 A. Well, a hit is not a rumor.

9 Q. A hit is not a rumor?

10 A. No.

11 Q. Does it always have to be on paper?

12 A. What? A rumor or a hit?

13 Q. A hit.

14 A. A hit is somebody giving somebody else an
15 order to assault somebody or physically hurt them,
16 murder them, stab them, choke them to death.

17 Q. The order --

18 A. That's the hit.

19 Q. -- does it have to be in writing?

20 A. No.

21 Q. And so it can be verbal?

22 A. Yes.

23 Q. And so it can be passed by voice, by
24 telephone?

25 A. Or even mail.

1 Q. Or mail?

2 A. Yes.

3 Q. But it can always be passed by
4 word-of-mouth from one person to another to another?

5 A. Yes.

6 Q. Right. You also mentioned that people, in
7 your experience, would often take credit for some
8 kind of violent act or intimidation that they really
9 weren't responsible for, that they didn't do.

10 A. Yes.

11 Q. Why would they do that?

12 A. I guess to gain recognition, to gain
13 respect.

14 Q. So you would gain respect by taking
15 credit, well, for doing something that makes them
16 seem tough.

17 A. Yes.

18 Q. That makes it appear that they followed
19 some kind of rule even if they didn't.

20 A. Yes.

21 Q. And the person who does that might be in
22 fear that they would not seem tough enough if they
23 didn't take that credit.

24 A. Could be.

25 Q. You mentioned about protective custody and

1 kites.

2 A. Yes.

3 Q. So someone who asked for protective
4 custody would be seen as a coward and would lose
5 respect?

6 A. Yes.

7 Q. And if they lose respect, then they could
8 become the object of extortion, assaults.

9 A. Yes.

10 Q. And people would send out kites -- that
11 is, a message -- to the COs or the authorities that
12 there was a hit on somebody in order to make it
13 appear that that person was asking for protective
14 custody.

15 A. Yes.

16 Q. And that was a tactic to embarrass them
17 and make them appear weak.

18 A. Yes.

19 Q. So in a nutshell, there was a constant
20 politicking for respect within the prison system.

21 A. Yes.

22 Q. And not just among SNM members, but just
23 about any inmate.

24 A. Yes.

25 Q. Now, you spoke about a llavero, keys, or

1 something.

2 A. Yes.

3 Q. What do you mean by that?

4 A. A llavero is someone that has the head
5 leadership, the one that has the say-so.

6 Q. About what?

7 A. About anything that goes on. Any
8 decision-making.

9 Q. In the prison system or the gang or --

10 A. Yes.

11 Q. How high up? Covering the entire SNM?

12 A. Yes.

13 Q. What if another person claims to be a
14 llavero and has a different opinion about what
15 should be done, for instance, about doing exercise
16 or anything? How is that resolved?

17 A. Sometimes it's not.

18 Q. Now, when those disputes are not resolved,
19 does that give an opportunity to members to insert
20 their personal grudges and under cover of some kind
21 of SNM issue? Let's assume somebody has a personal
22 grudge against Joe, and they know that some people
23 in influence and authority have a grudge against
24 Joe.

25 A. Right.

1 Q. Then they can gain respect by beating up
2 Joe.

3 A. True.

4 MR. MAYNARD: No further questions.

5 THE COURT: Thank you, Mr. Maynard.

6 Ms. Duncan, do you have cross-examination
7 of Mr. Armijo?

8 MS. DUNCAN: Yes, Your Honor.

9 THE COURT: Ms. Duncan.

10 CROSS-EXAMINATION

11 BY MS. DUNCAN:

12 Q. Mr. Armijo, you testified on direct
13 examination that you didn't agree with a lot of
14 things that Anthony Ray Baca was trying to do at
15 Southern; correct?

16 A. Yes.

17 Q. The truth is that you wanted to kill
18 Anthony Ray Baca; correct?

19 A. Only after that he put a hit on me, yes.

20 Q. You spoke with Agent Acee on February 24,
21 2017; correct?

22 A. Yes.

23 Q. And when you spoke to Mr. Acee, you talked
24 about this hit; correct?

25 A. Yes.

1 Q. You told him that you never told on Baca
2 or knew Baca to have snitched on you; correct? But
3 that you did want to hit Mr. Baca?

4 A. Only after he put a hit on me, yes.

5 Q. So the answer is yes, you did want to hit
6 Mr. Baca?

7 A. Yes, only after he put a hit on me.

8 Q. And you said that you wanted to put a hit
9 on him because Mr. Baca was trying to mold the SNM
10 after some out-of-state gangs; correct?

11 A. What was that? Can you repeat that?

12 Q. I can. That you didn't care for Mr. Baca
13 because he tried to mold the SNM after some
14 out-of-state prison gangs.

15 A. I didn't care for his ideas, no.

16 Q. Now, when you were talking to Mr. Jewkes,
17 you denied being convicted in 2007 of attempted
18 battery on a peace officer; correct?

19 A. Correct.

20 Q. I'd like to show you --

21 MS. DUNCAN: May I have a moment, Your
22 Honor?

23 THE COURT: Certainly.

24 BY MS. DUNCAN:

25 Q. For the record, I'm looking at Bates stamp

1 Baca 3926.

2 MS. DUNCAN: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MS. DUNCAN:

5 Q. If you could look at this document and
6 tell me if you recognize it.

7 A. I might have. I don't remember all my
8 charges. I don't remember all the paperwork and my
9 history.

10 Q. Are you known as Manuel Jacob Armijo?

11 A. Yes.

12 Q. Are you also known as Jacob Armijo?

13 A. Yes.

14 Q. Jake Armijo?

15 A. Yes.

16 Q. Vincent Ray Lucero?

17 A. No.

18 Q. Raymond Lucero?

19 A. No.

20 Q. Big Jake?

21 A. Yes.

22 Q. And you testified you were 6'3"?

23 A. Yes.

24 Q. Is your birthdate in 1973?

25 A. Yes.

1 Q. I'd like to show you another document, but
2 I don't want to say your birth date on the record.
3 Is this your birthdate?

4 A. No.

5 Q. What's wrong with it?

6 A. My birthday is 2/9/73.

7 Q. You testified on direct about benefits
8 that you received. I'd like to talk to you a little
9 bit about those. You were charged with
10 participating in a racketeering conspiracy on April
11 21, 2016; correct?

12 A. Yes.

13 Q. And after your arrest, you asked the Court
14 to release you pending trial; correct?

15 A. Yes.

16 Q. And the Court denied your request.

17 A. Yes.

18 Q. At the time, you were facing a maximum
19 sentence of 20 years?

20 A. Yes.

21 Q. At the time of your arrest, your home was
22 searched; correct?

23 A. Yes.

24 Q. And a firearm was found in your home.

25 A. Yes.

1 Q. You're a felon.

2 A. Yes.

3 Q. And it's illegal for a felon to possess a
4 firearm; correct?

5 A. I did not possess a firearm.

6 Q. Okay. I'll move on. The fact that the
7 firearm was discovered in your home was brought up
8 during the detention hearing; correct?

9 A. I don't remember.

10 Q. And you have previously been convicted for
11 escape; correct?

12 A. Yes.

13 Q. You escaped while you were being
14 transported from the jail to court?

15 A. Yes.

16 Q. Ran away from a correctional officer?

17 A. Yes.

18 Q. And at the time that the Court was
19 considering whether to release you, you'd already
20 been convicted in 1991 of an aggravated assault;
21 correct?

22 A. Yes.

23 Q. And in 1994, of a commercial burglary?

24 A. Yes.

25 Q. 1998, possession of methamphetamine?

1 A. Yes.

2 Q. 2001, distribution of a controlled
3 substance, methamphetamine?

4 A. Yes.

5 Q. And you'd been sentenced to imprisonment
6 and probation for that offense; correct?

7 A. Yes.

8 Q. And while on probation, you violated the
9 terms of your probation; correct?

10 A. Yes.

11 Q. Because you used methamphetamine, and
12 you're not allowed to do that; correct?

13 A. When was this?

14 Q. This was in -- after your 2001 conviction
15 for distribution of a controlled substance.

16 A. If that's what it says.

17 Q. And you had also been convicted in 2005 of
18 a DWI?

19 MR. CASTELLANO: Objection, Your Honor.

20 A. No.

21 THE COURT: Hold on. Hold on.

22 MR. CASTELLANO: It's improper
23 impeachment, Your Honor. Impeachment is about
24 felonies or crimes of dishonesty.

25 MS. DUNCAN: Your Honor, I'm not trying to

1 impeach him with his prior convictions. I'm trying
2 to show the benefit the Government gave him by
3 assisting in his release pending trial, despite all
4 of these charges.

5 THE COURT: Why don't you ask the
6 question, and let me see what the answer is.

7 BY MS. DUNCAN:

8 Q. So at the time that the Court was
9 considering releasing you in this case, by then, you
10 had been convicted in 2005 of a DWI?

11 A. No.

12 THE COURT: He's never been convicted.
13 It's not a felony, is it?

14 MS. DUNCAN: No. But I'm not using it to
15 impeach his character, Your Honor. I'm showing why
16 he was detained pending trial. And one of the
17 reasons is because he has this long criminal history
18 of both felonies and misdemeanors.

19 THE COURT: Stick to the felonies.

20 MS. DUNCAN: Okay.

21 BY MS. DUNCAN:

22 Q. In 2006, you were convicted of possession
23 of methamphetamine; correct?

24 A. Yes.

25 Q. In 2007, receiving or transferring a

1 stolen vehicle?

2 A. Yes.

3 Q. We've already talked about the attempted
4 battery.

5 So you were detained pending trial in this
6 case; correct?

7 A. Yes.

8 Q. And your counsel filed a motion to
9 reconsider that decision.

10 A. Yes.

11 Q. Where you were asking to be released
12 pending trial.

13 A. Yes.

14 Q. And you had a hearing that was scheduled
15 in June of 2016; correct?

16 A. Yes.

17 Q. And you began cooperating with the
18 Government on June 28, 2016; correct?

19 A. Yes.

20 Q. And then the following day, you had your
21 hearing on the request to be released; correct?

22 A. I don't know. I don't know if I recall.

23 Q. Let's see. You were ultimately released
24 pending trial; correct?

25 A. Yes.

1 Q. And the Government withdrew its opposition
2 to your release after you began cooperating.

3 A. Yes.

4 Q. When you were released in June of 2016,
5 you signed an order setting conditions of release;
6 correct?

7 A. Yes.

8 Q. And when you signed that order, you were
9 promising to follow all of the conditions of your
10 release.

11 A. Yes.

12 Q. And that was a promise that you made to
13 the Court.

14 A. Yes.

15 Q. And you broke that promise.

16 A. Yes.

17 Q. And you broke that promise by using heroin
18 on at least three occasions.

19 A. Yes.

20 Q. And that was in November of last year.

21 A. Yes.

22 Q. You pled guilty in March of last year;
23 correct?

24 A. Yes.

25 Q. And at the time you pled guilty, you pled

1 to an offense that carries a maximum penalty of 20
2 years; correct?

3 A. Yes.

4 Q. And your plea agreement includes what is
5 known as a 5K addendum; correct?

6 A. I have no idea.

7 Q. Do you remember having an addendum to your
8 plea agreement where you agreed to cooperate with
9 the Government?

10 A. Yes.

11 Q. And you agreed to cooperate in the hopes
12 that the Government would move for a lesser sentence
13 for you?

14 A. Yes.

15 Q. And you understand that it's up to this
16 table to file that motion to get you that lesser
17 sentence; correct?

18 A. Yes.

19 Q. You understand that in Federal Court there
20 are things called sentencing guidelines; correct?

21 A. Yes.

22 Q. And they look at the offense to which you
23 pled guilty and also to your criminal history;
24 correct?

25 A. Yes.

1 Q. And the sentencing guidelines in your case
2 recommend a sentence of life imprisonment; correct?

3 A. I have no idea. I have not reviewed that
4 with my lawyer.

5 Q. You have or have not reviewed that with --

6 A. Have not.

7 Q. Nonetheless, you're expecting a sentence
8 of less than 20 years, correct, for testifying?

9 A. Yes.

10 MS. DUNCAN: If I could have a moment,
11 Your Honor?

12 THE COURT: You may.

13 BY MS. DUNCAN:

14 Q. Mr. Jewkes asked you about an incident
15 where you were at a party with Angel Munoz and lured
16 another man outside; correct?

17 A. Yes, lured him to the back of the house,
18 yes.

19 Q. How did you lure him?

20 A. Told him, let me talk to him.

21 Q. Did you have to convince him to come out
22 with you?

23 A. No, not really. He was drunk.

24 Q. And then when you got outside, what did
25 you do?

1 A. Well, we were already outside.

2 Q. So you lured him to the back of the house?

3 A. Yes.

4 Q. Away from other people?

5 A. Yes.

6 Q. What did you do when you got to the back

7 of the house?

8 A. I stabbed him three or four times.

9 Q. Show me how you stabbed him.

10 A. Just straight.

11 Q. Three or four times? And did he fall to

12 the ground?

13 A. Yes.

14 Q. And what did you do after he fell to the

15 ground?

16 A. Turned away and walked off.

17 Q. Did you remain at the party, or did you

18 flee?

19 A. We left.

20 MS. DUNCAN: I have no further questions.

21 THE COURT: Thank you, Ms. Duncan.

22 Mr. Castellano, do you have redirect of

23 Mr. Armijo?

24 MR. CASTELLANO: Yes, Your Honor.

25 THE COURT: Mr. Castellano.

1 MR. CASTELLANO: May I approach the
2 witness, Your Honor?

3 THE COURT: You may.

4 REDIRECT EXAMINATION

5 BY MR. CASTELLANO:

6 Q. I'll hand you what has been marked as 695,
7 and ask if you recognize it.

8 A. Yes.

9 Q. I'm going to have you look at the back
10 side as well.

11 A. Okay.

12 Q. Sir, does that document have your
13 signature on it anywhere?

14 A. Yes.

15 Q. Without telling us all the contents of the
16 document, is it the addendum to your plea agreement
17 which covers your cooperation in this case?

18 A. Yes.

19 MR. CASTELLANO: Your Honor, I'd move the
20 admission of Government's Exhibit 695.

21 THE COURT: Any objection, Mr. Jewkes?

22 MR. JEWKES: Let me look at it real quick,
23 Your Honor.

24 MR. CASTELLANO: I'm showing the document
25 to Counsel. It's Exhibit 695. I'm moving its

1 admission at this time.

2 THE COURT: Any objection?

3 MS. DUNCAN: No, Your Honor.

4 MR. VILLA: No objection.

5 MR. JEWKES: No objection.

6 MS. BHALLA: No objection.

7 THE COURT: Government's Exhibit 695 will
8 be admitted in evidence.

9 (Government Exhibit 695 admitted.)

10 BY MR. CASTELLANO:

11 Q. Sir, we're going to take a look at your
12 addendum. Is this an addendum to the plea agreement
13 you entered with the United States?

14 A. Yes.

15 Q. Okay. Now, what was your understanding
16 about cooperating in this case? In other words, do
17 you see paragraph 2 that says you agree to cooperate
18 by giving truthful and complete information and
19 testimony concerning your participation and
20 knowledge of criminal activities?

21 A. Yes.

22 Q. Is that why you're here today, sir?

23 A. Yes.

24 Q. Do you understand that it creates problems
25 for you if you falsely implicate an innocent person

1 in the commission of a crime or exaggerate someone's
2 involvement?

3 A. Yes.

4 Q. You also understand it creates problem for
5 you if you falsely minimize someone else's
6 involvement?

7 A. Yes.

8 Q. And did you agree to testify as a witness
9 in either federal or state or grand jury
10 proceedings?

11 A. Yes.

12 Q. If I can see the back side of that
13 document, please.

14 Take a look at paragraph 6, Mr. Armijo.
15 Do you see where it says, "Upon completion of your
16 cooperation, the United States may move, pursuant to
17 5K1 and 18 United States Code, Section 3553(e), to
18 have the Court depart downward from the guideline
19 range or statutory minimum sentence."

20 A. Yes.

21 Q. So if the United States moves on your
22 behalf before sentencing, who makes the final
23 determination about your sentence?

24 A. The Court, the Judge.

25 Q. So is it your understanding that the judge

1 hearing your testimony is the judge who is going to
2 decide what your ultimate fate in this case is?

3 A. Yes.

4 Q. Now, what are some of the problems for
5 somebody who lies about their involvement and takes
6 responsibility for something they didn't do? Can
7 there be consequences for that?

8 A. Yes.

9 Q. What kind of consequences?

10 A. It could lead to their death.

11 Q. Now, you talked about the COs. In terms
12 of the SNM and the relationship with the corrections
13 officers, what might happen if a corrections officer
14 disrespects an SNM Gang member?

15 A. They could be assaulted.

16 Q. And especially -- what happens if you're
17 in a group with other SNM Gang members, and the
18 corrections officer assaults you in their presence?
19 I'm sorry, not assaults you. Insults you.

20 A. Usually take retaliation. Usually
21 assaults him on the spot.

22 Q. Now, Mr. Baca's attorney asked you about
23 wanting to kill Mr. Baca. Do you remember that?

24 A. Yes.

25 Q. Can you tell us about the hit that Mr.

1 Baca put on you?

2 MS. DUNCAN: Your Honor, I object, and ask
3 for a basis for his opinion.

4 THE COURT: Why don't you ask how he
5 knows, without revealing anything that was said to
6 him?

7 MR. CASTELLANO: All right.

8 BY MR. CASTELLANO:

9 Q. Mr. Armijo, do you remember a certain
10 incident in the prison related to this incident?

11 A. Yes.

12 Q. And how are you aware of the circumstances
13 of that situation?

14 A. A friend of mine came out of segregation
15 and was moved into my pod and right away told me
16 that he --

17 MS. DUNCAN: Your Honor, I object. This
18 is hearsay.

19 THE COURT: Sustained.

20 MR. CASTELLANO: Your Honor, this does go
21 to his state of mind and his motivation for wanting
22 to kill Mr. Baca. The door was opened by the
23 defendants in this case.

24 THE COURT: Well, I think they get enough
25 of a picture of what happened. Sustained.

1 BY MR. CASTELLANO:

2 Q. Let me move on to some -- without words --
3 actions that took place. Without telling us any
4 words, did you hear any conversation related to you
5 and this hit?

6 A. Yes.

7 MS. DUNCAN: Your Honor, I object.

8 THE COURT: Well, I won't let him get into
9 the nature of them. We'll leave it at that.

10 MR. CASTELLANO: I didn't ask for any -- I
11 didn't ask for the words that were spoken, Your
12 Honor.

13 BY MR. CASTELLANO:

14 Q. I want to ask you if you overheard a
15 conversation --

16 THE COURT: I think he said yes. Let's
17 move on.

18 Q. And related to that, did you see any
19 weapons produced?

20 A. Yes.

21 Q. And did you -- what did you do with that
22 weapon?

23 A. I took it.

24 MR. CASTELLANO: Pass the witness, Your
25 Honor.

1 THE COURT: All right. Thank you, Mr.
2 Castellano.

3 Do you have anything further?

4 MS. DUNCAN: I do, Your Honor.

5 THE COURT: I wonder if we ought to pick
6 up the witness in the morning? What do you think?

7 MS. DUNCAN: That's fine with me, Your
8 Honor.

9 MR. CASTELLANO: Your Honor, we're also
10 going to be calling him next week.

11 THE COURT: All right. Well, let's pick
12 him up in the morning, and we'll see if there's
13 going to be any more questions.

14 All right. Ladies and gentlemen, I
15 appreciate your hard work. See you at 8:30 in the
16 morning. And I appreciate the way you've gone about
17 your task. Y'all have a good evening.

18 (The jury left the courtroom.)

19 THE COURT: I passed out and filed this
20 morning the first batch of jury instructions, and I
21 will continue to work on those. The handwritten
22 ones we marked as "first." The typed ones that were
23 filed later in the day are also styled as "first."
24 They're the same. I didn't review them in between.
25 I am proofing those. I may change that so that

1 every set has its own number. I'll talk to
2 Ms. Wild, and she'll tell me what to do on that.

3 Y'all have submitted an ostrich defense on
4 the knowingly instruction. I can see why it might
5 be relevant, but I'm going to need some input from
6 everybody. You're going to have to tell me what the
7 fact is that you're going to contend the defendants
8 knowingly were ignoring. So give that some thought.
9 If you don't need that instruction or aren't going
10 to push it, then I'll listen to arguments whether it
11 should be in or out. But if you're going to advance
12 it, I need to know what the fact is that you think
13 that they were deliberately blinded to.

14 MR. CASTELLANO: We will, Your Honor. And
15 if necessary, we'll just wait to see how the
16 evidence plays out. I understand the Court's
17 position.

18 THE COURT: All right. But tell me what
19 the fact is you're going to contend they were
20 deliberately blind to.

21 All right. I appreciate your hard work.
22 Have a good evening.

23 (The Court stood in recess.)
24
25

1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 3rd day of February, 2019.

13
14
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